D-1.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10

Amend: R9-10-1201, R9-10-1203, R9-10-1207, R9-10-1209, R9-10-1210

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10

Amend: R9-10-1201, R9-10-1203, R9-10-1207, R9-10-1209, R9-10-1210

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules in Title 9, Chapter 10, Article 12 regarding Home Health Agencies. Specifically, the Department indicates it is proposing several rule changes to enhance the administration and oversight of home health agencies. The Department states amendments in R9-10-1203 will limit the number of agencies an administrator can serve to five, aiming to improve oversight and focus on patient care services. The Department indicates, since administrators are responsible for 87.6% of a facility's duties, the new rule changes are expected to provide a significant benefit to administrators for having more manageable workloads, leading to better patient outcomes. Furthermore, the Department is proposing changes in R9-10-1207 to require timely development and regular review of patient care plans to increase transparency and collaboration in patient care plans. Additionally, the Department is proposing amendments to R9-10-1209 to clarify medical record documentation, adding protection for healthcare providers. Lastly, the Department is proposing updates to R9-10-1210 to allow physician assistants to sign orders and include licensed health aides in the workforce, expanding service capabilities and benefiting home health agencies. Overall, the Department indicates these rule changes aim to improve management, patient outcomes, and operational efficiency in home health agencies.

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 any study relevant to this rulemaking.

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

The Department is required to protect the health of the people in Arizona, and license and regulate health care institutions. This rulemaking is a result of a 2023 Five-Year Review Report and seeks to align the rules with standards set forth by the Centers for Medicare Medicaid Services. Wholly, the rulemaking seeks to satisfy requirements that the Department adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The Department estimates that stakeholders will benefit from the changes in the rules and that any moderate or substantial costs will be associated with administrators who can no longer oversee more than five facilities.

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 has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

6. What are the economic impacts on stakeholders?

The Department, home health agencies, health care providers (including their patients and their families), and the general public will be directly affected by, bear the costs of, or directly benefit from the rules.

The rulemaking restricts the number of facilities an administrator can be associated with, which is anticipated to enhance oversight of home health agencies and allow for more focused services to patients and families. The Department estimates that administrators who oversee more than five facilities may incur moderate costs (between $1,000 and $10,000) for being stipulated with a limit of five facilities, however the management and operations of a facility will significantly benefit from the new changes in the rules. Further, the rulemaking amends existing

rules to provide greater opportunity for the patient and caregiver(s) to participate in the plan of care. The Department estimates that the new changes in the rule will cause home health agencies to incur minimal (less than $1,000) to no costs, and home health agencies and the patients receiving services from a home health agency will receive a significant benefit for an increase in transparency and collaboration. Other amendments are not expected to increase administrative burden or costs.

The Department is adding a requirement that a home health agency documents and responds to a referral from a health care provider within 48 hours of receiving the referral. The Department expects patients will receive a significant benefit from this change by having a quicker turnaround time in response to the referral. Health care providers and home health agencies may incur a minimal administrative burden; however, the Department believes the benefits of the new rule outweigh the costs.

The rulemaking will have no effect on state revenues.

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

The Department indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on August 9, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

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

The Department indicates it received three (3) formal written comments during the public comment period from Erica Drury with MGA Healthcare, Jim Melancon with Aveanna Healthcare, and Catherine (Kate) Morrison with Maxim Healthcare. Additionally, at oral proceedings held on September 10, 2024, the Department heard comments from Catherine (Kate) Morrison and Heather Alvarez from Maxim Healthcare Services and Bill Sczepanski from Team Select Homecare. All comments appear to focus on concerns regarding the rules and their applicability to private duty nursing. Summaries of the comments received and the Department's response are included in Section 12 of the Department's Notice of Final Rulemaking Preamble. Additionally, copies of the written comments are included in the final materials for the Council's reference.

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 none of the rules included in this rulemaking package require the issuance of a license, permit, 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 there is no corresponding federal law.

11. Conclusion

This regular rulemaking from the Department seeks to amend five (5) rules in Title 9, Chapter 10, Article 12 regarding Home Health Agencies. Specifically, the Department indicates it is proposing several rule changes to enhance the administration and oversight of home health agencies.

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.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

October 28, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 10, Article 12, Home Health Agencies

Dear Ms. Klein:

The attached final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for your use in reviewing the rulemaking package:

1. The close of record date: September 10, 2024

2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:
   The rulemaking for 9 A.A.C. 10, Article 12 is related to a five-year review report.

3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:
   The rulemaking does not establish a fee.

4. Whether the rulemaking contains a fee increase:
   The rulemaking does not contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
   The Department is not requesting an immediate effective date for the rules.

6. 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 or justification for the rule:
   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.

7. 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 (JLBC) of the number of new full-time employees necessary to implement and enforce the rule:
The Department of Health Services is not required to make a certification to JLBC because the rule does not require any new full-time employees.

8. A list of all documents enclosed:
   - Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
   - An economic, small business, and consumer impact statement that contains the information required by A.R.S. §41-1055
   - General and specific statutes authorizing the rules, including relevant statutory definitions
   - Copy of written comments received
   - Copy of current rules
   - Governor's Office approval via e mail from the Policy Advisor (initial and of the Notice of Final Rulemaking)

The Department's point of contact for questions about the rulemaking documents is Lucinda Feeley at Lucinda.Feeley@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG: lf

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES –

HEALTH CARE INSTITUTIONS: LICENSING

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the governor on:

April 17, 2024

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

R9-10-1201	Amend
R9-10-1203	Amend
R9-10-1207	Amend
R9-10-1209	Amend
R9-10-1210	Amend

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

Authorizing statute: A.R.S. §§ 36-132(A)(1) and 17, and 36-136(G)

Implementing statute: A.R.S. §§ 36-151 through 36-160, 36-405, 36-406, and 36-411

4. The effective date of the rule:

This rule shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is (to be filled in by *Register* editor).

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 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 the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 934, May 10, 2024, 19, [R24-78]

Notice of Proposed Rulemaking: 30 A.A.R. 2531, August 9, 2024, 32, File number: [R24-145]

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

Name:	Thomas Salow
Title:	Assistant Director
Division:	Public Health Licensing
Address:	150 N. 18th Ave., Suite 500, Phoenix, AZ 85007
Telephone:	(602) 542-6383
Email:	thomas.salow@azdhs.gov
or	
Name:	Stacie Gravito
Title:	Office Chief, Administrative Counsel and Rules
Division:	Policy and Intergovernmental Affairs
Address:	150 N. 18th Ave., Suite 200, Phoenix, AZ 85007
Telephone:	(602) 542-1020
Email:	stacie.gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) and (17) require the Arizona Department of Health Services (Department) to

protect the health of the people in Arizona, and license and regulate health care institutions. The Department, in its 2023 Home Health Agencies Five Year Review Report (Report), identified matters that if addressed would improve the effectiveness of the rules. The matters identified in the Report include aligning the rules with standards set forth by the Centers for Medicare and Medicaid Services and amending the rules necessary for the proper administration and enforcement of the laws relating to public health to promote continuity and improve patient outcomes. The purpose of this rulemaking is to amend the rules to address the matters identified and to complete the proposed course of action stated in the Report. The Governor's Regulatory Review Council approved the Report on April 2, 2024, and the Department received rulemaking approval from the governor's office, pursuant to § 41-1039(A) on April 17, 2024.

8. 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

9. 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

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) and (17) require the Arizona Department of Health Services (Department) to protect the health of the people in Arizona, and license and regulate health care institutions. The rules in 9 A.A.C. 10, Article 12 were established in 2013 to comply with Laws 2011, Ch. 96, which required the Department to adopt rules for health care institutions to reduce costs and facilitate licensing of integrated health programs. This rulemaking focuses on aligning rules with standards set by the Centers for Medicare and Medicaid Services and amending the rules to ensure proper administration and enforcement of public health laws, and improve patient outcomes. By making these changes, the Department aims to enhance the effectiveness of our regulations, promote continuity in care, and improve patient outcomes. This analysis covers the costs and benefits associated with the rule changes related to addressing issues identified in recent five-year review reports and amending rules related to public health and safety. The annual cost and revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification. The Department expects that the individuals who will be directly affected by, bear the costs of, or directly benefit from the rules include the Department, home health agencies, health care providers, patients and their families, and the general public.

The Department is proposing several rule changes to enhance the administration and oversight of home health agencies. Amendments in R9-10-1203 will limit the number of agencies an administrator can serve to five, aiming to improve oversight and focus on patient care services. Since administrators are responsible for 87.6% of a facility's duties, the new rule changes are expected to provide a significant benefit to administrators for having more manageable workloads, leading to better patient outcomes. Administrators who oversee more than five home health agencies may incur moderate costs from the new rules. Furthermore, the changes in R9-10-1207 require timely development and regular review of patient care plans are expected to increase transparency and collaboration in patient care plans, with minimal costs for home health agencies. Amendments to R9-10-1209 clarify medical record documentation, adding protection for healthcare providers without additional costs. Lastly, updates to R9-10-1210 will allow physician assistants to sign orders and include licensed health aides in the workforce, expanding service capabilities and benefiting home health agencies. Overall, these rule changes aim to improve management, patient outcomes, and operational efficiency in home health agencies. The Department estimates that the new changes in the rules may cause home health agencies to incur minimal to no costs, and home health agencies and the patients at a home health agency will receive a significant benefit from increased transparency and collaboration.

The Department expects that limiting the number of facilities an administrator can oversee will enhance oversight and provide more focused services, benefiting healthcare providers, patients, and their families. Additionally, new requirements in R9-10-1207 for documenting and responding to referrals within 48 hours aim to improve patient outcomes by ensuring quicker responses. Also, a new requirement in R9-10-1207 mandates that the care plan be established & implemented within five days. This new requirement may impose minimal costs on home health agencies, but since home health agencies that accept patients will have to implement the care plan, the new requirement clarifies the timeframe that the care plan must be implemented. While this may pose a minimal administrative burden, the Department believes the benefits will outweigh the costs, leading to better collaboration in care plans and overall improved patient care.

Home health agencies benefit the general public by providing essential medical and personal care services, improving health outcomes, and enhancing the quality of life for patients, which help elderly and disabled individuals maintain independence, reduce hospital stays, lower healthcare costs, and support families with professional assistance. The new rules are expected to significantly benefit the public by ensuring proper administration and enforcement of public health laws, promoting continuity, and improving patient outcomes.

The Department expects that most small businesses operating as home health agencies may incur minimal costs under the new rules. However, administrators overseeing more than 40 agencies could face substantial costs due to the new limit of five agencies per administrator. Despite these potential costs, the rule changes are expected to significantly benefit the public by reducing fraudulent activity and improving oversight. With home health and hospice agencies categorized as "high risk" by the Centers for Medicare and Medicaid, the stringent administrative requirements aim to enhance survey readiness and reduce the number of unprepared providers.

The new rules for home health agencies are expected to enhance oversight, improve patient care, and promote better health outcomes. By limiting the number of facilities an administrator can oversee and requiring timely responses to referrals, the rules aim to provide more focused and efficient services. These changes may incur minimal administrative costs for agencies, but the overall benefits, including improved collaboration in care plans, better patient outcomes, and reduced healthcare costs, outweigh the expenses. The general public will benefit from the proper administration and enforcement of public health laws, leading to improved continuity and quality of care.

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

The Department did not make any changes between the proposed rulemaking and the final rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received three written formal comments from Erica Drury with MGA Healthcare, Jim Melancon with Aveanna Healthcare, and Catherine (Kate) Morrison with Maxim Healthcare.

Comment Summary from Erica Drury, MGA Healthcare:
Drury advocated for amendments to the proposed home health rule to better align with the unique nature of private duty nursing (PDN) services and highlighted that PDN, unlike home health, involves continuous, long-term care for medically stable patients with predictable routines. As such, the frequent supervision required for home health patients is unnecessary for stable PDN patients, imposing undue financial and administrative burdens on providers without improving care outcomes. Drury suggests exempting PDN services from the frequent supervision requirements in section R9-10-1207 and proposes amendments to clearly define PDN in the regulations

Department Response:
In response to Erica Drury's comments, the Department acknowledges the distinction between private duty nursing (PDN) and home health services, but clarifies that the requirement for a Home Health Agency (HHA) license to provide PDN is an Arizona Health Care Cost Containment System (AHCCCS) requirement, not within the Department's regulatory scope. Since PDN is not explicitly addressed in the current rules, the Department cannot define it or make specific exemptions for it in this rulemaking process. The focus of the rulemaking is on clarifying regulations, updating cross-references, and aligning with CMS standards. The Department encourages Erica to continue working with AHCCCS on PDN-related concerns.

Comment Summary from Jim Melancon with Aveanna Healthcare:
Melancon's comments emphasize the need for private duty nursing (PDN) services in Arizona to be distinguished from traditional home health services due to their continuous nature. The comment suggested that supervision requirements for PDN patients, who are often medically stable with well-established care routines, should align with the type of care being provided to avoid unnecessary administrative burdens and costs. Frequent supervision, as required for intermittent home health services, is unnecessary for stable PDN patients. Melancon suggested the Department to further amend the rules to exempt PDN from the rules.

Department Response:
The Department's response acknowledged the differences between private duty nursing (PDN) services and traditional home health care but clarifies that the requirement for a home health agency license to provide PDN services falls under Arizona Health Care Cost Containment System (AHCCCS) regulations, not state licensing rules. The Department does not define or regulate PDN services in the current Chapter 10 rules, and therefore cannot exempt PDN from the proposed changes. While recognizing

the concerns about supervision requirements for stable patients, the rules are designed to regulate home health services and align with state and CMS standards. The Department recommended engagement with AHCCCS for PDN-specific issues.

Comment Summary from Catherine (Kate) Morrison with Maxim Healthcare:

Morrison urges the rules to be amended to exempt PDN agencies from the proposed changes to home health agency licensing requirements under R9-10-1207. Morrison explained that while PDN agencies in Arizona must follow Medicare Conditions of Participation, most states do not require this, as PDN agencies do not typically provide Medicare services. Morrison stated that the proposed changes, particularly regarding care plan updates, are unnecessary and duplicative for PDN agencies, adding administrative burden without improving patient care. In addition, Morrison mentioned the continuous nature of PDN services, where patients have stable, long-term needs, unlike traditional home health patients. Morrison suggested the Department amend the rules to exempt PDN from the requirements outlined in Article 12.

Department Response:

The Department's response to Kate Morrison, the Department acknowledged the feedback on the proposed changes to Home Health Agency licensing requirements. The Department clarified that the requirement to follow Medicare Conditions of Participation for private duty nursing (PDN) services is governed by the Arizona Health Care Cost Containment System (AHCCCS), not the Department. The Department does not regulate or define PDN in Chapter 10 and, therefore, cannot exempt PDN services from the proposed rule changes, which are specific to home health agencies and aligned with Medicare and CMS standards. The Department recommends further engagement with AHCCCS on requirements for PDN services.

Oral Proceeding:

During the Oral Proceeding that the Department held on Tuesday, September 10, 2024, three individuals attended and made comments Catherine (Kate) Morrison and Heather Alvarez from Maxim Healthcare Services and Bill Sczepanski from Team Select Homecare.

Below is a summary of key concerns raised by Morrison and Alvarez:

1. **Care Plan Review and Documentation**: Section R9-10-1207 (Care Plan) requires agencies to review a patient's care plan every 30 days and document the review. However, they believe this is duplicative of their existing processes and would increase the administrative burden without adding significant value. The rule was designed with traditional home health in mind, where visits are short and less frequent (e.g., one hour a day or once a week). In contrast, PDN involves extended daily shifts with patients, often delivered by LPNs or RNs. Since PDN is deeply involved in patient care, reviewing the care plan every 30 days seems unnecessary. Adding this requirement would strain their staffing resources, particularly in rural areas, where they may have to decline patients due to increased workload. Alvarez requested clarification on whether the care plan review must be conducted by an RN or if an LPN, who is already working with the patient, could perform it. Additionally, she questioned whether the review must be in person or if telehealth would suffice since it's a verbal review, not an assessment.
2. **Referral Response Time**: The rule mandates that home health agencies respond to a referral from a healthcare provider within 48 hours. The team expressed concern about whether this requirement is necessary for their specific type of service, particularly for private duty nursing (PDN). This rule also seems suited to traditional home health, not PDN. PDN agencies receive a large number of irrelevant referrals, including for services they don't provide. Responding to every referral would require hiring additional staff and would burden healthcare providers unnecessarily.
3. **Private Duty Nursing (PDN) Exemption**: A key request was to exempt private duty nursing from these rules because PDN differs significantly from traditional home health. They emphasized that their patients typically have stable conditions and do not experience the same frequent changes that warrant the proposed requirements. They argue that PDN should be defined and treated separately in the regulations.

Sczepanski expressed his agreement with the points made by Morrison and Alvarez and mentioned that the proposed rules, while well-intentioned, were created with traditional home health services in mind, not private duty nursing (PDN). PDN patients are typically stable but have acute, long-term care needs. The current rules fail to recognize these differences. Sczepanski recommended the Department to amend the rules to clarify the distinction between PDN and other home health services before finalizing the rules. Bill clarifies that while PDN agencies fall under the home health umbrella in Arizona, they do not provide the same range of services as traditional home health. PDN agencies are focused solely on providing long-term, hourly care, primarily for children with serious medical needs (e.g., tube feeding, ventilators). Unlike home health, PDN does not involve short-term, intermittent care or use of a wide range of disciplines like occupational or physical therapy. He explained that in Arizona, PDN is billed under specific codes (e.g., s9123, s9124), and while agencies must be home health-certified to provide PDN, they are not required to offer all traditional home health services. This distinction is crucial, but it appears misunderstood by those drafting the regulations.

In conclusion, all three individuals who attended the Oral Proceeding advocated for the exemption of PDN services from these home health rules, as they feel the regulations are not well-suited to their specific type of care and operational needs.

Department's Response:

The Department thanked the stakeholders for their attendance and comments. The majority of comments made were geared towards private duty nursing, which is a term not used in the Article 12 rules. The Department clarified that the rules under discussion were for medical licensing by the Arizona Department of Health Services (AZDHS) and not related to access rules from other agencies. Amending the rules further to exempt private duty nurses from the requirements in Article 12 would be outside of the scope of this rulemaking. The Department was approved to amend the rules to address the issues identified in a recent five-year review report which include making the rules more clear, concise, and understandable; updating cross-references and correct grammatical errors; aligning the rules with the Centers for Medicare and Medicaid Services (CMS) standards; and amending rules necessary for the proper administration and enforcement of the laws relating to public health to promote continuity and improve patient outcomes. The proposed rules are intended to encompass all home health facilities, including PDN, under the state's home health services license. The Department acknowledged the concerns stakeholders expressed but emphasized that the Department does not specifically address PDNs in the rules and that the final rulemaking process was moving forward, pending approval from the Governor's office.

13. 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:

Not applicable

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 does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

There are no federal rules 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:

Not applicable

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

Not applicable

15. 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

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES –

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 12. HOME HEALTH AGENCIES

Section

ARTICLE 12. HOME HEALTH AGENCIES

R9-10-1201. Definitions

In addition to the definitions in A.R.S. §§ 36-401, 36-151 and R9-10-101, the following apply in this Article, unless otherwise specified:

1. "Branch office" means a location other than a home health agency's main administrative office that:
    a. Operates under the license of the home health agency, and
    b. Is under the control of the home health agency's administrator.
2. "Home health services director" means an individual who provides direction for the home health services provided by or through a home health agency.
3. "Medical social services" means activities that assist a patient to cope with concerns about the patient's illness or injury, and may include helping to find resources to address the patient's concerns.

R9-10-1203. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of the home health agency;
2. Establish, in writing:
    a. A home health agency's scope of services, and
    b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1204;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
    a. Expected not to be present in a home health agency's administrative office for more than 30 calendar days, or
    b. Not present in a home health agency's administrative office for more than 30 calendar days;
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator;
8. Appoint, according to A.R.S. § 36-151(5)(b), an advisory group that consists of four or more members that include:
    a. A physician;
    b. A registered nurse who has at least one year of experience as a registered nurse providing home health services; and
    c. Two or more individuals who represent a medical, nursing, or health-related profession; and
9. Ensure that the advisory group appointed according to subsection (A)(8):
    a. Meets at least once every 12 months,
    b. Documents meetings, and
    c. Assists in establishing and evaluating policies and procedures for the home health agency.

B. An administrator:

1. Shall serve no more than five home health agencies;
~~1.~~2. Is directly accountable to the governing authority of a home health agency for all services provided by the home health agency;
~~2.~~3. Has the authority and responsibility to manage the home health agency;

~~3.~~4. Except as provided in subsection (A)(6), designates, in writing, an individual who is present at the home health agency's administrative office and accountable for services provided by the home health agency when the administrator is not present at the home health agency's administrative office; and

~~4.~~5. Ensures compliance with A.R.S. § 36-411.

C. An administrator shall:

1. Ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, and volunteers;
    b. Cover orientation and in-service education for personnel members, employees, and volunteers;
    c. Cover how a personnel member may submit a complaint relating to patient care;
    d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    e. Include a method to identify a patient to ensure the patient receives the appropriate services;
    f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
    g. Cover specific steps for:
        i. A patient to file a complaint, and
        ii. The home health agency to respond to a patient complaint;
    h. Cover health care directives;
    i. Cover medical records, including electronic medical records;
    j. Cover a quality management program, including incident reports and supporting documentation;
    k. Cover contracted services; and
    l. Cover and designate which personnel members or employees are required to have current certification in cardiopulmonary resuscitation and first aid training;
2. Ensure that policies and procedures for services provided by a home health agency are established, documented, and implemented to protect the health and safety of a patient that:
    a. Cover patient admission, discharge planning, and discharge;
    b. Cover the provision of home health services and, if applicable, specific types of supportive services and medical social services;
    c. Include when general consent and informed consent are required;
    d. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
    e. Cover medication procurement, if applicable, and administration; and
    f. Cover infection control;
3. Ensure that policies and procedures are:
    a. Available to personnel members, employees, and volunteers, and
    b. Reviewed at least once every three years and updated as needed;
4. Ensure that records of advisory group meetings are maintained for at least 24 months after the date of the meeting;
5. Designate, in writing, a home health services director who is:
    a. A physician with at least 24 months of experience working for or with a home health agency; or
    b. A registered nurse with at least three years of nursing experience, including at least 24 months of experience as a registered nurse providing home health services;
6. Ensure that:

a. Speech therapy or speech-language pathology services are provided by a speech-language pathologist according to A.R.S. § 36-1940.01 or speech-language pathologist assistant licensed according to A.R.S. § 36-1940.04;
b. Nutritional services are provided by a registered dietitian;
c. Occupational therapy services are provided by an occupational therapist or occupational therapy assistant;
d. Physical therapy services are provided by a physical therapist or a physical therapist assistant;
e. Respiratory care services are provided by a respiratory therapist, respiratory therapy technician licensed according to A.R.S. Title 32, Chapter 35, or a practical nurse or registered nurse licensed according to A.R.S. Title 32, Chapter 15;
f. Pharmacy services are provided by a pharmacist; and
g. Medical social services are provided:
i. By a personnel member qualified according to policies and procedures that coordinates medical social services; and
ii. For medical social services, related to the practice of social work in A.R.S. § 32-3251, by a personnel member licensed under A.R.S. Title 32, Chapter 33, Article 5;

7. Ensure that the services specified in subsection (C)(6) are provided to a patient only under an order by the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
8. Unless otherwise stated, ensure that:
a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
b. When documentation or information is required by this Chapter to be submitted on behalf of a home health agency, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the home health agency.

R9-10-1207. Care Plan

A. An administrator shall ensure that a care plan is developed for each patient:
1. Based on an assessment of the patient as required in R9-10-1210(D)(1) or (F)(2)(e)(i);
2. With participation from:
a. The patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
b. A registered nurse; ~~and~~
3. That includes:
a. The patient's diagnosis;
b. Surgery dates relevant to home health services, if applicable;
c. The patient's cognitive awareness of self, location, and time;
d. Functional abilities and limitations;
e. Goals for functional rehabilitation, if applicable;
f. The type, duration, and frequency of each service to be provided;
g. Treatments the patient is receiving from a source other than the home health agency;
h. Medications and herbal supplements reported by the patient or the patient's representative as being used by the patient, and the dose, route of administration, and schedule for administration of each medication or herbal supplement;
i. Any known drug allergies;
j. Nutritional requirements and preferences;
k. Specific measures to improve the patient's safety and protect the patient against injury; and

l. A discharge plan for the patient including, if applicable, a plan for assessing the accomplishment of treatment or therapy goals for the patient~~.~~; and

4. That is established and implemented within five days of start of care.

B. An administrator shall ensure that:

1. Home health services are provided to a patient by the home health agency according to the patient's care plan;
2. The patient's care plan is reviewed and updated:
   a. Whenever there is a change in the patient's condition that indicates a need for a change in the type, duration, or frequency of the services being provided;
   b. If the patient's physician, registered nurse practitioner, or podiatrist, as applicable, orders a change in the care plan; and
   c. At least every 60 calendar days; ~~and~~
3. The patient's care plan is reviewed and documented by a registered nurse, a occupational therapist, a occupational therapist assistant, a physical therapist, or a physical therapist assistant, with the patient or the patient's representative at least every 30 calendar days;
4. The patient's physician, physician assistant, registered nurse practitioner, or podiatrist, as applicable, authenticates the care plan with a signature within 30 calendar days after the care plan is initially developed and whenever the care plan is ~~reviewed or~~ updated~~.~~; and
5. A home health agency documents and responds to a referral from a health care provider within 48 hours of receiving the referral.

R9-10-1209. Medical Records

A. An administrator shall ensure that:

1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
   a. Recorded only by an individual authorized by ~~a~~ policies and procedures to make the entry;
   b. Dated, timed, legible, and authenticated; and
   c. Not changed to make the initial entry illegible;
3. An order is:
   a. Dated when the order is entered in the patient's medical record and includes the time of the order;
   b. Authenticated by a physician, registered nurse practitioner, or podiatrist according to policies and procedures; and
   c. If the order is a verbal order, authenticated by the physician, registered nurse practitioner, or podiatrist issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to personnel members, physicians, registered nurse practitioners, or podiatrists authorized by policies and procedures to access the patient's medical record;
6. Information in a patient's medical record is disclosed to an individual not authorized under subsection (A)(5) only with the written consent of a patient or the patient's representative or as permitted by law; and
7. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If a home health agency maintains patients' medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a patient's medical record contains:

1. Patient information that includes:
    a. The patient's name;
    b. The patient's address and telephone number;
    c. The patient's date of birth; and
    d. Any known allergies, including medication allergies;
2. The date the patient began receiving services from the home health agency and, if applicable, the date the patient stopped receiving services from the home health agency;
3. The name and telephone of the patient's physician or registered nurse practitioner;
4. The name and telephone number of patient's podiatrist, if applicable;
5. Documentation of general consent and, if applicable, informed consent;
6. Documentation of medical history and current diagnoses;
7. A copy of the patient's health care directive, if applicable;
8. If applicable, the name and contact information of the patient's representative and:
    a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    b. If the patient's representative;
        i. Is a legal guardian, a copy of the court order establishing guardianship; or
        ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
9. Orders;
10. Assessments;
11. Care plan;
12. Progress notes;
13. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
14. Documentation of meetings with the patient to assess the home health services and supportive services provided to the patient;
15. The disposition of the patient upon discharge;
16. The discharge plan;
17. Discharge instructions and discharge summary, if applicable;
18. If applicable:
    a. Laboratory reports,
    b. Radiologic reports,
    c. Diagnostic reports, and
    d. Consultation reports;
19. Documentation of a medication administered to the patient that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. For a medication administered for pain:
        i. An assessment of the patient's pain before administering the medication, and
        ii. The effect of the medication administered;

d. For a psychotropic medication:
    i. An assessment of the patient's behavior before administering the psychotropic medication, and
    ii. The effect of the psychotropic medication administered;
e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
f. Any adverse reaction a patient has to the medication;

20. Documentation of tasks assigned to a home health aide or other personnel member;
21. Documentation of coordination of patient care;
22. Copies of patient summary reports sent to the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
23. Documentation of contacts with the patient's physician, registered nurse practitioner, or podiatrist, as applicable, by a personnel member or the patient.

R9-10-1210. Home Health Services

A. An administrator shall ensure that an individual admitted to the home health agency has an order from a physician, registered nurse practitioner, physician assistant, or podiatrist for home health services.

B. An administrator shall ensure that the home health services director provides direction for home health services provided by or through the home health agency.

C. A home health services director shall ensure that nursing services are provided by a registered nurse or practical nurse, according to policies and procedures.

D. A home health services director shall ensure that a registered nurse:

1. Unless a patient's physician, physician assistant, or registered nurse practitioner orders only speech therapy, occupational therapy, or physical therapy for the patient, within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts and document an initial assessment of the patient to determine:
    a. The needs of the patient;
    b. Resources available to address the patient's needs;
    c. The patient's home and family environment;
    d. Goals for patient care;
    e. Medications used by the patient, including non-compliance, drug interactions, side effects, and contraindications; and
    f. Medical supplies or equipment needed by the patient;
2. Reviews a patient's health care directives at the time of the initial assessment;
3. Implements a patient's care plan, developed as specified in R9-10-1207;
4. Coordinates patient care with other individuals providing home health services or other services to the patient;
5. Immediately informs the patient's physician or registered nurse practitioner of a change in a patient's condition that requires medical services; and
6. At least every 60 calendar days until a patient is discharged:
    a. Reassesses the patient based on the patient's care plan, needs, and medical condition; and
    b. Summarizes the patient's condition and needs for the patient's physician, registered nurse practitioner, or podiatrist, as applicable.

E. A home health services director shall ensure that:

1. A patient's condition and the services provided to the patient are documented in the patient's medical record after each patient contact; and

2. Verbal orders from a patient's physician, registered nurse practitioner, or podiatrist, as applicable, are:
    a. Except as specified in subsection (F)(2)(d), received by a registered nurse and documented by the registered nurse in the patient's medical record; and
    b. Authenticated by the patient's physician, registered nurse practitioner, or podiatrist, as applicable, with a signature, within 30 calendar days.

F. A home health services director shall ensure that:

1. A registered nurse:
    a. Except as specified in subsection (F)(2)(b)(i) and (ii):
        i. Assigns tasks in writing to a home health aide or licensed health aide who is providing home health services to a patient; and
        ii. Verifies the competency of the home health aide or licensed health aide in performing assigned tasks;
    b. Except as specified in subsection (F)(2)(b)(iii), provides direction for the home health aide or licensed health aide services provided to a patient; and
    c. Except as specified in subsection (F)(2)(e)(ii), meets with a patient who is receiving home health aide or licensed health aide services to assess the home health services provided by the home health aide or licensed health aide:
        i. At least every two weeks when the patient is also receiving nursing services or therapy services, and
        ii. At least every 60 calendar days when the patient is only receiving home health aide or licensed health aide services;
2. When a patient's physician or registered nurse practitioner orders speech therapy, occupational therapy, or physical therapy for the patient, an individual specified in R9-10-1203(C)(6)(a), (c), or (d), as applicable:
    a. Provides the applicable therapy service to the patient according to the patient's care plan;
    b. If a home health aide or licensed health aide is assigned to assist the patient in performing activities related to the therapy service:
        i. Assigns tasks in writing to the home health aide or licensed health aide who is assisting the patient;
        ii. Verifies the competency of the home health aide or licensed health aide in performing assigned tasks; and
        iii. Provides direction to the home health aide or licensed health aide in performing the assigned tasks related to the therapy service;
    c. Coordinates the provision of the therapy service to the patient with the registered nurse providing direction for other home health services for the patient;
    d. Documents in the patient's medical record any orders by the patient's physician or registered nurse practitioner received concerning the therapy service; and
    e. If the only home health services ordered for the patient are speech therapy, occupational therapy, or physical therapy:
        i. Within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient as specified in subsections (D)(1)(a) through (f); and
        ii. Meets with a patient who is receiving home health services from a home health aide or licensed health aide every two weeks to assess the home health services provided by the home health aide; and
3. A home health aide:
    a. Is only assigned to provide services the home health aide can competently perform; and

b. Only performs tasks assigned to the home health aide in writing by a registered nurse or as specified in subsection (F)(2)(b)(i).

4. A licensed health aide:

a. Is only licensed to provide services the licensed health aide can competently perform, and

b. Only performs tasks assigned to the licensed health aide in writing by a registered nurse and as specified under A.R.S. § 32-1601(14).

ARIZONA DEPARTMENT
OF HEALTH SERVICES

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING ARTICLE 12. HOME HEALTH AGENCIES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

September 2024

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES -

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 12. HOME HEALTH AGENCIES

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) and (17) require the Arizona Department of Health Services (Department) to protect the health of the people in Arizona, and license and regulate health care institutions. The Department, in its 2023 Home Health Agencies Five Year Review Report (Report), identified matters that if addressed would improve the effectiveness of the rules. The matters identified in the Report include aligning the rules with standards set forth by the Centers for Medicare and Medicaid Services and amending the rules necessary for the proper administration and enforcement of the laws relating to public health to promote continuity and improve patient outcomes. The purpose of this rulemaking is to amend the rules to address the matters identified and to complete the proposed course of action stated in the Report. The Governor's Regulatory Review Council approved the Report on April 2, 2024, and the Department received rulemaking approval from the governor's office, pursuant to § 41-1039(A) on April 17, 2024. The changes will conform to the current rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

2. Cost/Benefit Analysis

This analysis covers the costs and benefits associated with the rule changes related to addressing issues identified in recent five-year review reports and amending rules necessary for the proper administration and enforcement of the laws relating to public health. The annual cost and revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

3. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

a. The Department

b. Home health agencies

c. Health care providers, and patients and their families

d. The general public

A. The Department

The rules in 9 A.A.C. 10, Article 12 were made new in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services."

In this rulemaking, the Department is amending four Sections to address issues identified in a recent five-year review report, align the rules with standards set forth by the Centers for Medicare and Medicaid Services, and amend the rules necessary for the proper administration and enforcement of the laws relating to public health to promote continuity and improve patient outcomes.

B. Home Health Agencies

In this rulemaking the Department is creating a new subsection in R9-10-1203, and including that a home health administrator can serve to no more than five. Currently the rules do not stipulate how many agencies an administrator can serve. Restricting the number of facilities an administrator can be associated with is anticipated to enhance oversight of home health agencies and allow for more focused services to patients and families. Of the approximately 113 responsibilities of a home health agency, 99 are the distinct responsibility of the administrator. That is 87.6% of a facility's responsibility directly on the administrator. To ensure that a facility has proper leadership, personnel and administrative oversight it is only logical to limit the number of facilities for which a single person can be the administrator. This does not take into account the travel time between facilities and the necessity for continuity of administrative duties, a greater opportunity to know and lead staff, all of which will undoubtedly lead to fewer negative outcomes. The Department estimates that administrators who oversee more than five facilities may incur moderate costs for being stipulated with a limit of five facilities, however the management and operations of a facility will significantly benefit from the new changes in the rules.

Furthermore, the Department is amending rules in R9-10-1207, *Care Plan* to provide for more transparency, along with increased patient and caregiver collaboration with the proposed plan of care. The Department is creating a new subsection requiring the administrator to ensure that a care plan is developed for each patient and established and implemented within five days of start of care, and another new subsection to require the administrator to ensure that care is reviewed and documented with the patient or the patient’s representative at least every 30 calendar days. The greater the opportunity for the patient and caregiver(s) to participate in the plan of care, the greater the feeling of autonomy is for the patient. The process is not financially or workplace intensive, but a simple and succinct declaration in the nursing/physical therapy/occupational therapy narrative stating that the care plan has been reviewed and that no changes are seen as necessary by the patient and

caregiver(s) at this time. No signature from a prescribing professional advisory group member or prescriber is needed if no change is warranted. No additional visits are required outside of the regularly scheduled care plan to accommodate the change. Therefore, the Department estimates that the new changes in the rule will cause home health agencies to incur minimal to no costs, and home health agencies and the patients receiving services from a home health agency will receive a significant benefit for an increase in transparency and collaboration.

To clarify that the time should also be documented in a patient's medical entry, the Department is amending the rules in R9-10-1209, *Medical Records.* The Department does not expect this change to increase any sort of cost, rather it is a clarification of the current rule and is not expected to increase administrative burden. Additionally, the new change is expected to benefit healthcare providers by adding an extra layer of protection to their work. For instance, if a patient claims they did not receive their medication on time, the documented records with precise time and date would serve as a safeguard. Lastly, in R9-10-1210, *Home Health Services*, the Department is amending the rules to allow for a physician assistant to sign an order. In addition, the Department is adding a licensed health aide in compliance with A.R.S. § 32-1601(14) to work in a similar capacity to a home health aide. Both of the new changes in R9-10-1210 are expected to significantly benefit a home health agency by expanding the services provided by these professionals.

C. Health care providers, and patients and their families

The Department expects that health care providers that work at a home health agency and patients, and their families will increase collaborative efforts in care plans which can lead to patients and families having better outcomes. Limiting the number of facilities that an administrator can be affiliated with is expected to provide greater oversight of home health agencies and provide more focused services to patients and families.

In R9-10-1207, the Department is adding a requirement that a home health agency documents and responds to a referral from a health care provider within 48 hours of receiving the referral. The Department expects patients will receive a significant benefit from this change by having a quicker turnaround time in response to the referral. Health care providers and home health agencies may incur a minimal administrative burden, however the Department believes the benefits of the new rule outweigh the costs.

D. The General Public

Home health agencies significantly impact the general public by providing essential medical and personal care services to individuals in their homes, often resulting in improved health outcomes and quality of life for patients. These agencies enable elderly and disabled individuals to maintain independence and avoid prolonged hospital stays, reducing the burden on healthcare facilities and lowering overall healthcare costs. Additionally,

they support families by offering care and professional assistance, which can alleviate stress on the families and improve the well-being of patients.

The general public is expected to receive a significant benefit from the new rules by updating rules related to home health agencies that allow for the proper administration and enforcement of the laws relating to public health to promote continuity and improve patient outcomes.

A statement of the probable impact of the rules on small businesses

The Department expects that most small businesses operating as a home health agency may incur minimal costs under the new rules. However, there are some administrators who oversee 40+ home health agencies. By the Department limiting the number of agencies to five, some administrators operating a small business may incur substantial costs by not being allowed to operate as many home health agencies. In recent months the Department has become aware of home health agency fraud that can be minimized by adhering to more stringent administrative requirements. The inclusion of home health and hospice agencies to the Center for Medicare and Medicaid's "high risk" category is indicative of the need to more aggressively address limitations on the number of facilities that one administrator can serve. The Department surveyors have seen a definite increase in the number of licenses surrendered due to poor survey outcomes and abandoned locations. The majority of responsibilities for a home health agency, more than 70%, depend on the acuity and timeliness of the administrator, to this end the Department is suggesting an administrator be limited to 5 facilities. Limiting the number of facilities can increase the time dedicated to the preparation, policies and survey readiness, which can assist in reducing the number of providers that are unprepared for surveys. The Department estimates that the costs associated with this change in the rule will provide a significant benefit to the public due to the amount of fraudulent activity related to home health agencies, as described above.

a. Identification of the small businesses subject to the rules

Small businesses subject to the rule may include home health agencies that are privately owned.

b. The administrative and other costs required for compliance with the rules

A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in Section 2.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis.

6. A statement of the probable effect on state revenues

The rulemaking is not expected to have an effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

8. 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

Not applicable

Gmail

Lucinda Feeley <lucinda.feeley@azdhs.gov>

Notice of Proposed Rulemaking 30 A.A.R. 2531

Lucinda Feeley <lucinda.feeley@azdhs.gov> Thu, Sep 12, 2024 at 2:27 PM
To: Erica Drury <edrury@mgahomecare.com>
Cc: "thomas.salow@azdhs.gov" <thomas.salow@azdhs.gov>, Stacie Gravito <stacie.gravito@azdhs.gov>, Emily Rice <erice@b3strategies.com>
Bcc: Kristy Egg <kristy.egg@azdhs.gov>, Stephanie Seitz <stephanie.seitz@azdhs.gov>

Good afternoon Erica,

Thank you for your comments and suggested amendments regarding the Notice of Proposed Rulemaking for home health. We appreciate your input regarding private duty nursing services and home health care services, as well as the implications for supervision and administrative burden.

However, the requirement for a Home Health Agency license to provide private duty nursing services is an Arizona Health Care Cost Containment System (AHCCCS) requirement, not a state licensing issue under the Department's purview. The Department does not license or define private duty nursing separately in Chapter 10, as this term is not used in the rules. As a rulemaking standard, the Department can only define terms that are used within the relevant regulations.

The current rulemaking process is focused on addressing issues identified in the recent five-year-review report, including improving clarity, updating cross-references, and aligning with CMS standards to ensure better continuity of care and patient outcomes. While private duty nursing is a crucial service, it does not fall under the scope of this specific rulemaking effort. We recommend that you continue engaging with AHCCCS on matters related to private duty nursing and home health agency licensing requirements.

Thank you again for your feedback and for your dedication to improving patient care.

Best Regards,

Administrative Counsel and Rules

On Tue, Sep 10, 2024 at 1:59 PM Erica Drury <edrury@mgahomecare.com> wrote:

> Good afternoon,
>
> Please accept these comments and suggested amendments for the Notice of Proposed Rulemaking 30 A.A.R. 2531 for home health.
>
> In order to provide private duty nursing (PDN) services in Arizona, a provider must have a home health agency license. While PDN may be under the umbrella of home health agency licensure, PDN services are continuous which differs greatly from home health care services which are short term and intermittent. Therefore, supervision of cares should correlate with the services and model. Overly stringent supervision can lead to unnecessary costs and administrative burdens, especially when the patients in question are stable given their medical complexities and their care routines are well-established. Below is an overview of the differences between a PDN patient and home health care patient as well as suggested amendments to the proposed rule.
>
> 1. **Patient Stability:**

- **PDN:** In cases where patients have chronic conditions but are medically stable, the need for continuous oversight is reduced. These patients typically have predictable care routines and require ongoing nursing interventions that are routine in nature, such as ventilator management, medication administration, or assistance with activities of daily living.
- **Home Health:** Often serves patients recovering from acute episodes, who may require more dynamic adjustments in care. This could justify more frequent supervision. However, for stable PDN patients, their conditions are not subject to sudden changes, making frequent supervisory check-ins unnecessary.

2. **Well-Established Care Plans:**
   - **PDN:** For stable patients, care plans are typically long-standing and well understood by both the nurse and the patient's family. These nurses often work with the same patient for extended periods, developing deep familiarity with their medical and personal needs. This consistency reduces the need for constant supervision, as the nurse is already highly attuned to the patient's care.
   - **Home Health:** May involve more intermittent care, often from different providers, justifying more supervision to ensure continuity. But in PDN cases, the established rapport between the nurse and the patient allows for less direct oversight.
3. **Cost Considerations:**
   - **PDN:** Requiring frequent supervision for stable patients results in significant additional costs without improving patient outcomes. The stable nature of these patients' conditions means that the existing supervision levels are already sufficient to ensure safety and quality of care. Reducing the frequency of supervision would cut costs without compromising care.
   - **Home Health:** For less predictable conditions, higher levels of oversight may be necessary. However, imposing the same supervision standards on stable PDN patients creates an unnecessary financial burden.
4. **Burden on Providers:**
   - **PDN:** The high demand for PDN nurses means that time spent on excessive supervision diverts resources away from direct patient care. Easing supervisory requirements for stable patients allows nurses to focus more on delivering quality care and reduces the administrative load on supervisors and healthcare agencies.
   - **Home Health:** For more dynamic or complex cases, supervision is essential to adapt care quickly. However, stable PDN patients do not require this level of oversight, making frequent supervision redundant and inefficient.

In summary, PDN for stable patients should involve less frequent supervision to reduce costs and alleviate unnecessary burdens on healthcare providers. Since these patients are medically stable, frequent check-ins provide little added value and are an inefficient use of resources. Thus, PDN should be defined in R9-10-1201 and exempt from provision R9-10-1207.B.3, due to the nature of private duty nursing services being continuous and changes to the plan of care are less frequent than those of traditional/intermittent home health care services. The proposed private duty nursing services definition comes from federal regulation under CFR Title 42, § 440.80. Please let me know if you have any questions regarding the proposed amendments or would like to discuss further.

PROPOSED AMENDMENTS:

Amend section R9-10-1201:

***4. Private duty nursing services* means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—**

(a) By a registered nurse or a licensed practical nurse;

(b) Under the direction of the beneficiary's physician; and

(c) To a beneficiary in one or more of the following locations at the option of the State—

(1) His or her own home;

(2) A hospital; or

(3) A skilled nursing facility.

Amend section R9-10-1207:

6. Private duty nursing services, as defined in R9-10-1201.4, shall not apply to subsection (B)(3).

Thank you for the opportunity to comment.

Best,

Erica Drury

Vice President of Government Affairs and Payer Relations

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Notice of Proposed Rulemaking 30 A.A.R. 2531

Lucinda Feeley <lucinda.feeley@azdhs.gov> Thu, Sep 12, 2024 at 3:03 PM
To: Jim Melancon <Jim.Melancon@aveanna.com>
Cc: "thomas.salow@azdhs.gov" <thomas.salow@azdhs.gov>, Stacie Gravito <stacie.gravito@azdhs.gov>, Jim Melancon <Jim.Melancon@aveanna.com>
Bcc: Kristy Egg <kristy.egg@azdhs.gov>, Stephanie Seitz <stephanie.seitz@azdhs.gov>

Hello Jim,

Thank you for submitting your comments and proposed amendments regarding the Notice of Proposed Rulemaking for Home Health Agencies. We appreciate your input and insights regarding private duty nursing (PDN) services and traditional home health care.

While PDN services may indeed differ from home health care in terms of continuity and patient stability, the requirement for a provider to hold a home health agency license to deliver PDN services is governed by Arizona Health Care Cost Containment System (AHCCCS) regulations, not by the state's licensing rules. The Department does not define or regulate PDN services under the current Chapter 10 rules, as this term is not used within the existing framework. Therefore, we are unable to exempt PDN services from the proposed rule changes or define them in the manner suggested.

Regarding your concern about supervision requirements under R9-10-1207, we understand the desire to reduce administrative burdens for providers serving stable patients. However, the proposed rules are designed to address the regulatory oversight necessary for home health services, which remain distinct from PDN services under our regulatory authority. These rules are in place to ensure compliance with state licensing standards and align with CMS requirements.

We encourage you to continue working with AHCCCS regarding potential adjustments to the oversight and supervision requirements specific to PDN services. Thank you again for your thoughtful feedback, and please feel free to reach out with any additional questions.

Best regards,

Administrative Counsel and Rules

On Tue, Sep 10, 2024 at 3:15 PM Jim Melancon <Jim.Melancon@aveanna.com> wrote:

> Good afternoon,
>
> Thank you for the opportunity to comment and provide and suggested amendments for the Notice of Proposed Rulemaking 30 A.A.R. 2531 for home health.
>
> To provide private duty nursing (PDN) services in Arizona, a provider must be a duly licensed home health agency. And while PDN may fall under the umbrella of home health agency licensure, these services are continuous and not intermittent, or visit based like traditional home health services. Therefore, supervision of care should correlate with the services being provided. Overly stringent supervision can lead to unnecessary costs and administrative burden, especially when the patients receiving PDN services are stable given their medical complexities and their care routines are well-established. Below is an overview of some of the differences between a PDN patient and home health nursing patient. Additionally, suggested amendments are provided to the proposed rule.
>
> 1. **Patient Stability:**

- **PDN:** In cases where patients have chronic conditions but are medically stable, the need for continuous oversight is reduced. These patients typically have predictable care routines and require ongoing nursing interventions that are routine in nature, such as ventilator management, medication administration, or assistance with activities of daily living.
- **Home Health:** Often serves patients recovering from acute episodes, who may require more dynamic adjustments in care. This could justify more frequent supervision. However, for stable PDN patients, their conditions are not subject to sudden changes, making frequent supervisory check-ins unnecessary.

2. **Well-Established Care Plans:**
   - **PDN:** For stable patients, physician-approved care plans are typically long-standing and well understood by both the nurse and the patient's family. These nurses often work with the same patient for extended periods, developing deep familiarity with their patient's medical and personal needs. This consistency reduces the need for constant supervision, as the nurse is already highly attuned to the patient's care.
   - **Home Health:** Generally, involves more intermittent care, often from different providers, justifying more supervision to ensure continuity. With PDN cases, the established rapport between the nurse and the patient allows for less direct oversight.
3. **Cost Considerations:**
   - **PDN:** Requiring frequent supervision for stable patients results in significant additional costs without improving patient outcomes. The stable nature of these patients' conditions means that the existing supervision levels are already sufficient to ensure safety and quality of care. Reducing the frequency of supervision would cut costs without compromising care.
   - **Home Health:** For less predictable conditions, higher levels of oversight may be necessary. However, imposing the same supervision standards on stable PDN patients creates an unnecessary financial burden.
4. **Burden on Providers:**
   - **PDN:** The high demand for PDN nurses means that time spent on excessive supervision diverts resources away from direct patient care. Easing supervisory requirements for stable patients allows nurses to focus more on delivering quality care and reduces the administrative load on supervisors and healthcare agencies.
   - **Home Health:** For more dynamic or complex cases, supervision is essential to adapt care quickly. However, stable PDN patients do not require this level of oversight, making frequent supervision redundant and inefficient.

In summary, PDN for stable patients should involve less frequent supervision to reduce costs and alleviate unnecessary burdens on healthcare providers. Since these patients are medically stable, frequent check-ins provide little added value and are an inefficient use of resources. Thus, PDN should be defined in R9-10-1201 and exempt from provision R9-10-1207.B.3, due to the nature of private duty nursing services being continuous and changes to the plan of care are less frequent than those of traditional/intermittent home health care services. The proposed private duty nursing services definition comes from federal regulation under CFR Title 42, § 440.80. Please let me know if you have any questions regarding the proposed amendments or would like to discuss further.

PROPOSED AMENDMENTS:

Amend section R9-10-1201:

4. Private duty nursing services **means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—**

(a) By a registered nurse or a licensed practical nurse;

(b) Under the direction of the beneficiary's physician; and

(c) To a beneficiary in one or more of the following locations at the option of the State—

(1) His or her own home;

(2) A hospital; or

(3) A skilled nursing facility.

Amend section R9-10-1207:

6. Private duty nursing services, as defined in R9-10-1201.4, shall not apply to subsection (B)(3).

Regards,

Jim Melancon I Senior Vice President

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Comments // TITLE 9. HEALTH SERVICES - Article 12. Home Health Agencies

Lucinda Feeley <lucinda.feeley@azdhs.gov> Thu, Sep 12, 2024 at 2:52 PM
To: Catherine Morrison <caperezl@maxhealth.com>
Cc: "thomas.salow@azdhs.gov" <thomas.salow@azdhs.gov>, "stacie.gravito@azdhs.gov" <stacie.gravito@azdhs.gov>
Bcc: Kristy Egg <kristy.egg@azdhs.gov>, Stephanie Seitz <stephanie.seitz@azdhs.gov>

Hello Kate,

Thank you for your comments regarding the proposed changes to licensing requirements for Home Health Agencies. We appreciate your input and feedback on the potential impact of these changes.

It is important to note that the requirement to follow Medicare Conditions of Participation (CoP) for private duty nursing (PDN) services is an Arizona Health Care Cost Containment System (AHCCCS) requirement, not a licensing issue governed by the Department. The Department does not regulate or define private duty nursing in Chapter 10 since this term is not used in the existing rules. As such, we are unable to exempt PDN services from the proposed rule changes. These rules are specific to Home Health Agencies and align with the scope of services defined under Medicare and CMS standards.

Regarding your concern about R9-10-1207 and the care plan requirements, we recognize that PDN services involve continuous care, which differs from the intermittent care typical of home health services. However, the proposed rules are designed to address the regulatory needs of home health care services under state jurisdiction, and PDN services fall outside of this particular rulemaking.

We encourage you to continue engaging with AHCCCS regarding the Medicare CoP requirements for PDN services and appreciate your dedication to improving patient care. Thank you again for your feedback, and please feel free to reach out if you have any further questions or concerns.

Best regards,

Administrative Counsel and Rules

On Tue, Sep 10, 2024 at 1:49 PM Catherine Morrison <caperezl@maxhealth.com> wrote:

> Hello,
>
> Thank you for the opportunity to comment on proposed changes to licensing requirements for Home Health Agencies.
>
> As a private duty nursing (PDN) provider in Arizona, we are required to follow these licensing requirements under Medicare Conditions of Participation (CoP). Most states do not require PDN agencies to follow Medicare CoP regulations, as we do not provide Medicare services. We are eager to work with the state to remove those requirements.
>
> In the meantime, any new licensing rules for Home Health Agencies will impact PDN agencies. The proposed changes in R9-10-1207. Care Plan are unnecessary or duplicative to existing processes within our standard of care. This proposed change adds administrative burden that does not directly improve patient care or quality.

For example, a typical home health patient may receive care in their home for a short-term need, such recovery after knee surgery. A typical PDN patient requires continuous, skilled nursing care, often with ventilators or G-tubes, and does not frequently change status. However, when a PDN patient does enter the hospital, we are required to update the plan of care and authorization documents, ensuring quality of care and communication with the patient and patient representatives.

We urge you to please exempt PDN from the proposed rule changes. See language below.

Kate Morrison

Amend section R9-10-1201:

4. Private duty nursing services means nursing services for beneficiaries who require more individual and continuous care than is available from a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility. These services are provided—

(a) By a registered nurse or a licensed practical nurse;

(b) Under the direction of the beneficiary's physician; and

(c) To a beneficiary in one or more of the following locations at the option of the State—

(1) His or her own home;

(2) A hospital; or

(3) A skilled nursing facility.

Amend section R9-10-1207:

6. Private duty nursing services, as defined in R9-10-1201.4, shall not apply to subsection (B)(3).

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elevating care to empower lives™

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Director, State Government Affairs

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9 A.A.C. 10

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

Authority: A.R.S. §§ 36-132(A)(1), 36-136(G)

ARTICLE 12. HOME HEALTH AGENCIES

Section

ARTICLE 12. HOME HEALTH AGENCIES

R9-10-1201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article, unless otherwise specified:

1. "Branch office" means a location other than a home health agency's main administrative office that:
   a. Operates under the license of the home health agency, and
   b. Is under the control of the home health agency's administrator.
2. "Home health services director" means an individual who provides direction for the home health services provided by or through a home health agency.
3. "Medical social services" means activities that assist a patient to cope with concerns about the patient's illness or injury, and may include helping to find resources to address the patient's concerns.

R9-10-1202. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a home health agency shall:

1. Include on the application:
   a. The name and address of each proposed branch office, if applicable; and
   b. The geographic region to be served by:
      i. The proposed home health agency's administrative office, and
      ii. Each proposed branch office; and
2. Submit to the Department a copy of a valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1 for:
   a. The applicant, if the applicant is an individual; or
   b. Each individual with a 10% or greater ownership of the business organization, if the applicant is a business organization.

R9-10-1203. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of the home health agency;
2. Establish, in writing:
   a. A home health agency's scope of services, and
   b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1204;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
   a. Expected not to be present in a home health agency's administrative office for more than 30 calendar days, or
   b. Not present in a home health agency's administrative office for more than 30 calendar days;
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator;

8. Appoint, according to A.R.S. § 36-151(5)(b), an advisory group that consists of four or more members that include:
   a. A physician;
   b. A registered nurse who has at least one year of experience as a registered nurse providing home health services; and
   c. Two or more individuals who represent a medical, nursing, or health-related profession; and
9. Ensure that the advisory group appointed according to subsection (A)(8):
   a. Meets at least once every 12 months,
   b. Documents meetings, and
   c. Assists in establishing and evaluating policies and procedures for the home health agency.

B. An administrator:
1. Is directly accountable to the governing authority of a home health agency for all services provided by the home health agency;
2. Has the authority and responsibility to manage the home health agency;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present at the home health agency's administrative office and accountable for services provided by the home health agency when the administrator is not present at the home health agency's administrative office; and
4. Ensures compliance with A.R.S. § 36-411.

C. An administrator shall:
1. Ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, and volunteers;
   b. Cover orientation and in-service education for personnel members, employees, and volunteers;
   c. Cover how a personnel member may submit a complaint relating to patient care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Include a method to identify a patient to ensure the patient receives the appropriate services;
   f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
   g. Cover specific steps for:
      i. A patient to file a complaint, and
      ii. The home health agency to respond to a patient complaint;
   h. Cover health care directives;
   i. Cover medical records, including electronic medical records;
   j. Cover a quality management program, including incident reports and supporting documentation;
   k. Cover contracted services; and
   l. Cover and designate which personnel members or employees are required to have current certification in cardiopulmonary resuscitation and first aid training;
2. Ensure that policies and procedures for services provided by a home health agency are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover patient admission, discharge planning, and discharge;
   b. Cover the provision of home health services and, if applicable, specific types of supportive services and medical social services;
   c. Include when general consent and informed consent are required;
   d. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
   e. Cover medication procurement, if applicable, and administration; and
   f. Cover infection control;
3. Ensure that policies and procedures are:
   a. Available to personnel members, employees, and volunteers, and
   b. Reviewed at least once every three years and updated as needed;
4. Ensure that records of advisory group meetings are maintained for at least 24 months after the date of the meeting;
5. Designate, in writing, a home health services director who is:
   a. A physician with at least 24 months of experience working for or with a home health agency; or
   b. A registered nurse with at least three years of nursing experience, including at least 24 months of experience as a registered nurse providing home health services;
6. Ensure that:
   a. Speech therapy or speech-language pathology services are provided by a speech-language pathologist according to A.R.S. § 36-1940.01 or speech-language pathologist assistant licensed according to A.R.S. § 36-1940.04;
   b. Nutritional services are provided by a registered dietitian;
   c. Occupational therapy services are provided by an occupational therapist or occupational therapy assistant;
   d. Physical therapy services are provided by a physical therapist or a physical therapist assistant;
   e. Respiratory care services are provided by a respiratory therapist, respiratory therapy technician licensed according to A.R.S. Title 32, Chapter 35, or a practical nurse or registered nurse licensed according to A.R.S. Title 32, Chapter 15;
   f. Pharmacy services are provided by a pharmacist; and
   g. Medical social services are provided:

i. By a personnel member qualified according to policies and procedures that coordinates medical social services; and
ii. For medical social services, related to the practice of social work in A.R.S. § 32-3251, by a personnel member licensed under A.R.S. Title 32, Chapter 33, Article 5;

7. Ensure that the services specified in subsection (C)(6) are provided to a patient only under an order by the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
8. Unless otherwise stated, ensure that:
   a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
   b. When documentation or information is required by this Chapter to be submitted on behalf of a home health agency, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the home health agency.

R9-10-1204. Quality Management

An administrator shall ensure that:

1. A plan for a quality management program for the home health agency is established, documented, and implemented that includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate the provision of services, including oversight of personnel members;
   c. A method to evaluate the data collected to identify a concern about the provision of services;
   d. A method to make changes or take action as a result of the identification of a concern about the provision of services;
   e. A method to determine whether actions taken improved the provision of services; and
   f. The frequency of submitting the documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
   a. Each identified concern about the delivery of services related to patient care, and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority .

R9-10-1205. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-1206. Personnel

A. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the patients receiving services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides physical health services, and
   b. According to policies and procedures;
3. Sufficient personnel members are available with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the home health agency's scope of services,
   b. Meet the needs of a patient, and
   c. Ensure the health and safety of a patient; and
4. A personnel member, an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the home health agency, and
   b. As specified in R9-10-113.

B. An administrator shall ensure that a personnel record for each personnel member, employee, or volunteer:

1. Includes:
   a. The individual's name, date of birth, and contact telephone number;
   b. The individual's starting date of employment or volunteer service, and if applicable, ending date; and
   c. Documentation of:
      i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      ii. The individual's education and experience applicable to the individual's job duties;

iii. The individual's completed orientation and in-service education as required by policies and procedures;
iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
v. The individual's compliance with the requirements in A.R.S. § 36-411;
vi. Cardiopulmonary resuscitation training, if required for the individual according to this Article and policies and procedures;
vii. First aid training, if required for the individual according to this Article and policies and procedures; and
viii. Evidence of freedom from infectious tuberculosis, if required according to subsection (A)(4);

2. Is maintained:
   a. Throughout the individual's period of providing services in or for the home health agency; and
   b. For at least 24 months after the last date the individual provided services in or for the home health agency; and
3. For a personnel member who has not provided services for the home health agency during the previous 12 months, provided to the Department within 72 hours after the Department's request.

R9-10-1207. Care Plan

A. An administrator shall ensure that a care plan is developed for each patient:
1. Based on an assessment of the patient as required in R9-10-1210(D)(1) or (F)(2)(e)(i);
2. With participation from:
   a. The patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
   b. A registered nurse; and
3. That includes:
   a. The patient's diagnosis;
   b. Surgery dates relevant to home health services, if applicable;
   c. The patient's cognitive awareness of self, location, and time;
   d. Functional abilities and limitations;
   e. Goals for functional rehabilitation, if applicable;
   f. The type, duration, and frequency of each service to be provided;
   g. Treatments the patient is receiving from a source other than the home health agency;
   h. Medications and herbal supplements reported by the patient or the patient's representative as being used by the patient, and the dose, route of administration, and schedule for administration of each medication or herbal supplement;
   i. Any known drug allergies;
   j. Nutritional requirements and preferences;
   k. Specific measures to improve the patient's safety and protect the patient against injury; and
   l. A discharge plan for the patient including, if applicable, a plan for assessing the accomplishment of treatment or therapy goals for the patient.

B. An administrator shall ensure that:
1. Home health services are provided to a patient by the home health agency according to the patient's care plan;
2. The patient's care plan is reviewed and updated:
   a. Whenever there is a change in the patient's condition that indicates a need for a change in the type, duration, or frequency of the services being provided;
   b. If the patient's physician, registered nurse practitioner, or podiatrist, as applicable, orders a change in the care plan; and
   c. At least every 60 calendar days; and
3. The patient's physician, registered nurse practitioner, or podiatrist, as applicable, authenticates the care plan with a signature within 30 calendar days after the care plan is initially developed and whenever the care plan is reviewed or updated.

R9-10-1208. Patient Rights

A. An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted at the home health agency's administrative office;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures include:
   a. How and when a patient or the patient's representative is informed of patient rights in subsection (C); and
   b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:
1. A patient is treated with dignity, respect, and consideration;
2. A patient is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;

g. Sexual assault;
h. Seclusion;
i. Restraint;
j. Retaliation for submitting a complaint to the Department or another entity; or
k. Misappropriation of personal and private property by a home health agency's personnel members, employees, or volunteers; and

3. A patient or the patient's representative:
a. Except in an emergency, either consents to or refuses treatment;
b. May refuse or withdraw consent for treatment before treatment is initiated;
c. Except in an emergency, is informed of proposed alternatives to a psychotropic medication and the associated risks and possible complications of a psychotropic medication;
d. Is informed of the following:
i. The home health agency's policy on health care directives;
ii. The patient complaint process;
iii Home health services provided by or through the home health agency; and
iv. The rates and charges for services before the services are initiated and before a change in rates, charges, or services;
e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a home health agency for identification and administrative purposes; and
f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
i. Medical record, or
ii. Financial records.

C. A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in treatment and care for personal needs;
4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the home health agency is not authorized or not able to provide physical health services needed by the patient;
6. To participate or have the patient's representative participate in the development of a care plan or decisions concerning treatment;
7. To participate or refuse to participate in research or experimental treatment; and
8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

R9-10-1209. Medical Records

A. An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
a. Recorded only by an individual authorized by a policies and procedures to make the entry;
b. Dated, legible, and authenticated; and
c. Not changed to make the initial entry illegible;
3. An order is:
a. Dated when the order is entered in the patient's medical record and includes the time of the order;
b. Authenticated by a physician, registered nurse practitioner, or podiatrist according to policies and procedures; and
c. If the order is a verbal order, authenticated by the physician, registered nurse practitioner, or podiatrist issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to personnel members, physicians, registered nurse practitioners, or podiatrists authorized by policies and procedures to access the patient's medical record;
6. Information in a patient's medical record is disclosed to an individual not authorized under subsection (A)(5) only with the written consent of a patient or the patient's representative or as permitted by law; and
7. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If a home health agency maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
a. The patient's name;
b. The patient's address and telephone number;
c. The patient's date of birth; and
d. Any known allergies, including medication allergies;

2. The date the patient began receiving services from the home health agency and, if applicable, the date the patient stopped receiving services from the home health agency;
3. The name and telephone of the patient's physician or registered nurse practitioner;
4. The name and telephone number of patient's podiatrist, if applicable;
5. Documentation of general consent and, if applicable, informed consent;
6. Documentation of medical history and current diagnoses;
7. A copy of patient's health care directive, if applicable;
8. If applicable, the name and contact information of the patient's representative and:
   a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
   b. If the patient's representative;
      i. Is a legal guardian, a copy of the court order establishing guardianship; or
      ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
9. Orders;
10. Assessments;
11. Care plan;
12. Progress notes;
13. If applicable, documentation of any actions taken to control the patient's sudden, intense or out-of-control behavior to prevent harm to the patient or another individual;
14. Documentation of meetings with the patient to assess the home health services and supportive services provided to the patient;
15. The disposition of the patient upon discharge;
16. The discharge plan;
17. Discharge instructions and discharge summary, if applicable;
18. If applicable:
    a. Laboratory reports,
    b. Radiologic reports,
    c. Diagnostic reports, and
    d. Consultation reports;
19. Documentation of a medication administered to the patient that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. For a medication administered for pain:
       i. An assessment of the patient's pain before administering the medication, and
       ii. The effect of the medication administered;
    d. For a psychotropic medication:
       i. An assessment of the patient's behavior before administering the psychotropic medication, and
       ii. The effect of the psychotropic medication administered;
    e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
    f. Any adverse reaction a patient has to the medication;
20. Documentation of tasks assigned to a home health aide or other personnel member;
21. Documentation of coordination of patient care;
22. Copies of patient summary reports sent to the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
23. Documentation of contacts with the patient's physician, registered nurse practitioner, or podiatrist, as applicable, by a personnel member or the patient.

R9-10-1210. Home Health Services

A. An administrator shall ensure that an individual admitted to the home health agency has an order from a physician, registered nurse practitioner, or podiatrist for home health services.

B. An administrator shall ensure that the home health services director provides direction for home health services provided by or through the home health agency.

C. A home health services director shall ensure that nursing services are provided by a registered nurse or practical nurse, according to policies and procedures.

D. A home health services director shall ensure that a registered nurse:
1. Unless a patient's physician or registered nurse practitioner orders only speech therapy, occupational therapy, or physical therapy for the patient, within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient to determine:
   a. The needs of the patient;
   b. Resources available to address the patient's needs;
   c. The patient's home and family environment;
   d. Goals for patient care;

e. Medications used by the patient, including non-compliance, drug interactions, side effects, and contraindications; and
f. Medical supplies or equipment needed by the patient;
2. Reviews a patient's health care directives at the time of the initial assessment;
3. Implements a patient's care plan, developed as specified in R9-10-1207;
4. Coordinates patient care with other individuals providing home health services or other services to the patient;
5. Immediately informs the patient's physician or registered nurse practitioner of a change in a patient's condition that requires medical services; and
6. At least every 60 calendar days until a patient is discharged:
a. Reassesses the patient based on the patient's care plan, needs, and medical condition; and
b. Summarizes the patient's condition and needs for the patient's physician, registered nurse practitioner, or podiatrist, as applicable.

E. A home health services director shall ensure that:
1. A patient's condition and the services provided to the patient are documented in the patient's medical record after each patient contact; and
2. Verbal orders from a patient's physician, registered nurse practitioner, or podiatrist, as applicable, are:
a. Except as specified in subsection (F)(2)(d), received by a registered nurse and documented by the registered nurse in the patient's medical record; and
b. Authenticated by the patient's physician, registered nurse practitioner, or podiatrist, as applicable, with a signature, within 30 calendar days.

F. A home health services director shall ensure that:
1. A registered nurse:
a. Except as specified in subsection (F)(2)(b)(i) and (ii):
i. Assigns tasks in writing to a home health aide who is providing home health services to a patient; and
ii. Verifies the competency of the home health aide in performing assigned tasks;
b. Except as specified in subsection (F)(2)(b)(iii), provides direction for the home health aide services provided to a patient; and
c. Except as specified in subsection (F)(2)(e)(ii), meets with a patient who is receiving home health aide services to assess the home health services provided by the home health aide:
i. At least every two weeks when the patient is also receiving nursing services or therapy services, and
ii. At least every 60 calendar days when the patient is only receiving home health aide services;
2. When a patient's physician or registered nurse practitioner orders speech therapy, occupational therapy, or physical therapy for the patient, an individual specified in R9-10-1203(C)(6)(a), (c), or (d), as applicable:
a. Provides the applicable therapy service to the patient according to the patient's care plan;
b. If a home health aide is assigned to assist the patient in performing activities related to the therapy service:
i. Assigns tasks in writing to the home health aide who is assisting the patient;
ii. Verifies the competency of the home health aide in performing assigned tasks; and
iii. Provides direction to the home health aide in performing the assigned tasks related to the therapy service;
c. Coordinates the provision of the therapy service to the patient with the registered nurse providing direction for other home health services for the patient;
d. Documents in the patient's medical record any orders by the patient's physician or registered nurse practitioner received concerning the therapy service; and
e. If the only home health services ordered for the patient are speech therapy, occupational therapy, or physical therapy:
i. Within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient as specified in subsections (D)(1)(a) through (f); and
ii. Meets with a patient who is receiving home health services from a home health aide every two weeks to assess the home health services provided by the home health aide; and
3. A home health aide:
a. Is only assigned to provide services the home health aide can competently perform; and
b. Only performs tasks assigned to the home health aide in writing by a registered nurse or as specified in subsection (F)(2)(b)(i).

R9-10-1211. Supportive Services

A. A governing authority may include supportive services, including personal care services, in the scope of services for a home health agency.

B. An administrator:
1. May allow:
a. Supportive services to be provided to a patient without an order from a physician, registered nurse practitioner, or podiatrist; and
b. A personnel member who is not a home health aide to perform personal care services; and
2. Shall ensure that:
a. Supportive services are provided to a patient according to policies and procedures;
b. A registered nurse:
i. Assesses a patient's need for supportive services,
ii. Assigns specific tasks in writing to a home health aide providing supportive services other than personal care services,

iii. Assigns specific tasks in writing to a personnel member providing personal care services,
iv. Provides direction for supportive services, and
v. Includes supportive services in the reassessment of a patient required in R9-10-1210(D)(6); and

c. Supportive services are documented in a patient's medical record.

36-132. Department of health services; functions; contracts

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

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool

health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

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

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

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

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

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

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

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

C. The department, 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.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort,

prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

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 department, environmental department 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 monies 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 that are 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 that are 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 meatpacking 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 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 prepared in a kitchen of a private home for commercial purposes consistent with chapter 8, article 2 of this title.

(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.

(k) Spirituous liquor produced by a producer that is licensed by the department of liquor licenses and control or spirituous liquor imported and sold by wholesalers that is licensed by the department of liquor licenses and control. This exemption includes all commercially prepackaged spirituous liquor and all spirituous liquor poured at a licensed special event, festival or fair in this state.

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 identifying, storing, handling and selling 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 submitting 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. Confidential information may not 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 and chapter 8, article 2 of this title. 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 this 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 if 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" has the same meaning prescribed in section 36-931.

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.

36-151. Definitions

In this article, unless the context otherwise requires:

1. "County department" means a county department of health.

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

3. "Home health services" means the items and services enumerated in this paragraph and furnished to a person who is under the care of a physician and surgeon, not including the services of a physician and surgeon. Such items and services may be furnished by a home health agency or by others under arrangements made by such agency, under a plan established and periodically reviewed by such physician and surgeon. Such items and services, except as provided in subdivision (b) of this

paragraph, shall be furnished on a visiting basis in a place of residence used as such person's home and shall consist of:

(a) Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse and either physical, occupational or speech therapy, or, to the extent permitted in department regulations, part-time or intermittent services of a home health aide, and such items and services may further consist of any or all of the following:

(i) Medical social services under the direct supervision of a physician and surgeon.

(ii) Medical supplies, other than drugs and biologicals, and the use of medical appliances, while under such a plan.

(iii) In the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in paragraph 4 of this section.

(b) Any of the items and services enumerated in subdivision (a) of this paragraph, which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and under one of the following conditions:

(i) The furnishing of such items and services involves the use of equipment of such a nature that the items and services cannot readily be made available to such person in such place of residence.

(ii) Such items and services are furnished at such facility while he is there to receive any such item or service described in item (i) of this subdivision, but not including transportation of such person in connection with any such item or service. Any item or service, if it would not be included under paragraph 4 of this section if furnished to an inpatient of a hospital, shall be excluded.

4. "Inpatient hospital services" means the following items and services, furnished to an inpatient of a hospital and, except as provided in subdivision (c) of this paragraph, by the hospital:

(a) Bed and board.

(b) Such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients.

(c) Such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements, excluding the following:

(i) Medical or surgical services provided by a physician and surgeon, resident or intern.

(ii) The services of a private duty nurse or other private duty attendant. Item (i) of this subdivision shall not apply to services provided in the hospital by an intern or a resident-in-training under a teaching program approved by the council on medical education of the American medical association or, in the case of an osteopathic hospital, approved by the committee on hospitals of the bureau of professional education of the American osteopathic association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the council on dental education of the American dental association.

5. "Home health agency" means an agency or organization, or a subdivision of such an agency or organization, which meets all of the following requirements:

(a) Is primarily engaged in providing skilled nursing services and other therapeutic services.

(b) Has policies, established by a group of professional personnel, associated with the agency or organization, including one or more physicians and one or more registered professional nurses, to govern the services referred to in subdivision (a), which it provides, and provides for supervision of such services by a physician or registered professional nurse.

(c) Maintains clinical records on all patients.

6. "Supportive services" or "related supportive services" means services other than home health services which may reasonably be expected to help maintain an individual in his home as an alternative to institutionalization. Such services may include, but not limited to, nutrition counseling, meals services, homemaker services, general maintenance services and transportation services.

36-152. Authority to provide services; fees

The department may provide home health services to persons living in areas of the state in which adequate home nursing care is not otherwise available. For such services the department shall charge fees to be paid by persons to whom the department renders such services, or to be paid by any governmental agency purchasing such services for persons, except when such services are provided for demonstration and public health program activities.

36-153. Authority to contract for services and fees

The department may enter into contracts with any governmental or private agency, or with any person, whereby the department agrees to render such home health services to or for such agency or person in exchange for a fee to cover the cost of rendering such services.

36-154. Limitation of authority regarding services and fees

The authority granted by this article is limited to services voluntarily rendered and voluntarily received, and shall not apply to services required by statute, regulation, or ordinance to be rendered or received. Fees authorized by this article to be charged shall not exceed the cost to the department or county departments of rendering the services.

36-155. Personnel and equipment

The department may employ the necessary personnel, including nursing and supervisory personnel, and purchase equipment and materials necessary to maintain an effective program of home health services and to render such services.

36-156. Home health services and related supportive services; coordination and development; consultation; powers and duties of director

A. The director may act to coordinate the activities of the department with the activities of the department of economic security which relate, directly or indirectly, to home health services or related supportive services.

B. The director may act to coordinate the activities of existing home health agencies and other agencies or associations which supply, directly or indirectly, home health services or related supportive services.

C. Upon the request of any agency or organization, the director may provide consultation and assistance for:

1. The development and implementation of home health services programs to be carried out by such agency or association.

2. The coordination and integration of home health services provided by or planned by such agency or association with other existing or planned home health services programs or related supportive services programs.

3. The development and acquisition of funding sources for home health services.

D. In order to carry out the provisions of subsection C the director may enter into contracts or agreements with agencies or organizations specifying the type of consultation and assistance to be provided.

36-157. County authority to provide services; fees

County departments shall have the same authority as granted to the department, under the provisions of this article, to provide home health services within their county, enter into contracts therefor, charge fees for such services, and expend monies, employ personnel and to purchase equipment and materials.

36-158. Authority to receive funds; disbursement

The department and county departments may receive monies from any source for home health services. All such monies the department and county departments receive for such services shall be deposited in special accounts by the respective state and county treasurers. All such monies are appropriated to the department and county departments that receive them and shall be used to carry out the provisions of this article.

36-159. Authorized court action to collect fees

The department and county departments may maintain legal action through the attorney general or county attorney for the collection of fees charged for home health services which have been rendered to any person or agency.

36-160. Confidentiality of records; unauthorized disclosures unlawful; classification

A. Clinical records, medical reports and laboratory statements or reports, maintained as a result of services authorized by this article, and the information contained therein, shall be confidential and shall not be divulged to or open to inspection by any person other than attending physicians and surgeons, and persons authorized by them, the home health agency involved and state or local health officers. The director may, by regulation, authorize other persons or groups of persons to inspect or otherwise use such records and information.

B. A person who knowingly divulges such information or opens to inspection such clinical records, medical reports or laboratory statements or reports, without authority, to any person not by law or regulation entitled to such is guilty of a class 2 misdemeanor.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to

title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. The director shall establish a model in rule for the department to monitor health care institutions on-site that are found to not be in substantial compliance with the applicable licensure requirements. The director shall establish on-site monitoring fees

for health care institutions that are subject to the on-site monitoring requirements. The department may not charge a fee pursuant to this subsection for a complaint or compliance-related survey or inspection if a health care institution is in substantial compliance.

E. The department may provide in-service training to health care institutions that request in-service training relating to regulatory compliance outside of the survey process. The director shall establish in rule in-service training fees for health care institutions that request in-service training from the department.

F. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

G. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the

provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-411. Residential care institutions; nursing care institutions; home health agencies; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsection F of this section, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies, contracted persons of residential care institutions, nursing care institutions or home health agencies or volunteers of residential care institutions, nursing care institutions or home health agencies who provide medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days after employment or beginning volunteer work or contracted work.

B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.

C. Each residential care institution, nursing care institution and home health agency shall make documented, good faith efforts to:

1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.

2. Verify the current status of a person's fingerprint clearance card.

3. Beginning January 1, 2025, verify that a potential employee is not on the adult protective services registry pursuant to section 46-459. If a potential employee is

found to be on the adult protective services registry, the residential care institution, nursing care institution or home health agency may not hire the potential employee.

4. On or before March 31, 2025, verify that each employee is not on the adult protective services registry pursuant to section 46-459. If an employee is found to be on the adult protective services registry, the residential care institution, nursing care institution or home health agency shall take action to terminate the employment of that employee.

5. Beginning March 31, 2025, annually reverify that each employee is not on the adult protective services registry pursuant to section 46-459.

D. An employee, an owner, a contracted person or a volunteer or a facility on behalf of the employee, the owner, the contracted person or the volunteer shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work or volunteer service.

E. Except as provided in subsection F of this section, a residential care institution, nursing care institution or home health agency shall not allow an employee to continue employment or a volunteer or contracted person to continue to provide medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, has been denied approval pursuant to this section before May 7, 2001 or has had a fingerprint clearance card suspended or revoked.

F. An employee, volunteer or contractor of a residential care institution, nursing care institution or home health agency who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision is exempt from the fingerprinting requirements of this section if the person provides medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

G. If a person's employment record contains a six-month or longer time frame during which the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

H. For the purposes of this section:

1. "Direct supportive services":

(a) Means services other than home health services that provide direct individual care and that are not provided in a common area of a health care institution, including:

(i) Assistance with ambulating, bathing, toileting, grooming, eating and getting in and out of a bed or chair.

(ii) Assistance with self-administration of medication.

(iii) Janitorial, maintenance, housekeeping or other services provided in a resident's room.

(iv) Transportation services, including van services.

(b) Does not include services provided by persons contracted directly by a resident or the resident's family in a health care institution.

2. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

3. "Home health services" has the same meaning prescribed in section 36-151.

D-2.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16

Amend: R9-16-601, R9-16-602, R9-16-603, R9-16-604, R9-16-605, R9-16-606, R9-16-607, R9-16-608, R9-16-609, R9-16-610, R9-16-611, R9-16-612, R9-16-613, R9-16-614, R9-16-615, R9-16-616, R9-16-617, R9-16-618, R9-16-619, R9-16-620, R9-16-621, Table 6.1, R9-16-622, R9-16-623, R9-16-624

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16

Amend: R9-16-601, R9-16-602, R9-16-603, R9-16-604, R9-16-605, R9-16-606, R9-16-607, R9-16-608, R9-16-609, R9-16-610, R9-16-611, R9-16-612, R9-16-613, R9-16-614, R9-16-615, R9-16-616, R9-16-617, R9-16-618, R9-16-619, R9-16-620, R9-16-621, Table 6.1, R9-16-622, R9-16-623, R9-16-624

Summary:

This expedited rulemaking from the Department of Health Services seeks to amend twenty-four (24) rules and one (1) table regarding the certification of radiation technologists in Arizona. Specifically, the Department indicates it has identified several rules that require changes to update incorporations by reference to the current national standards. Furthermore, the Department states other changes are needed to correct cross-references, to improve clarity and understandability, and to make the rules more effective. The Department believes that these changes may also reduce the administrative burden of the rules.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department indicates the proposed amendments to the rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. Furthermore, the Department indicates the rulemaking amends requirements that are outdated or need clarification and addresses issues identified in a Five-Year Review Report, which was approved by the Council in October 2024. Council staff believes the Department's rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(6) and (7).

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on November 15, 2024 and the Notice of Final Expedited Rulemaking now before the Council for consideration.

6. 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 these rules are based on state statutes, rather than on federal requirements, except for those federal requirements related to mammography, such as 21 CFR 900.12. The Department states the rules are consistent with, and not more stringent than these federal requirements.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the radiation technologists certification issued pursuant to these rules meets the definition of the general permit in that the certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037

8. 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 for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department seeks to amend twenty-four (24) rules and one (1) table regarding the certification of radiation technologists in Arizona. Specifically, the Department indicates it has identified several rules that require changes to update incorporations by reference to the current national standards. Furthermore, the Department states other changes are needed to correct cross-references, to improve clarity and understandability, and to make the rules more effective. The Department believes that these changes may also reduce the administrative burden of the rules.

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

Council staff recommends approval of this rulemaking.

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

November 26, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 16, Expedited Rulemaking

Dear Ms. Klein:

1. The close of record date: November 25, 2024

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking amends requirements that are outdated or need clarification and address issues identified in a five-year-review report, meeting the requirements in A.R.S. § 41-1027(A)(6) and (7).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 16 relates to a five-year-review report approved by the Council on October 1, 2024.

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

The Department is requesting that the rules be heard at the Council meeting on February 4, 2025.

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

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

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES

OCCUPATIONAL LICENSING

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039(B) by the Governor on:

November 26, 2024

2. Article, Part or Sections Affected (as applicable)	**Rulemaking Action**
R9-16-601	Amend
R9-16-602	Amend
R9-16-603	Amend
R9-16-604	Amend
R9-16-605	Amend
R9-16-606	Amend
R9-16-607	Amend
R9-16-608	Amend
R9-16-609	Amend
R9-16-610	Amend
R9-16-611	Amend
R9-16-612	Amend
R9-16-613	Amend
R9-16-614	Amend
R9-16-615	Amend
R9-16-616	Amend
R9-16-617	Amend
R9-16-618	Amend
R9-16-619	Amend
R9-16-620	Amend
R9-16-621	Amend
Table 6.1	Amend

R9-16-622	Amend
R9-16-623	Amend
R9-16-624	Amend

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

Authorizing statutes: A.R.S. §§ 32-2803 and 36-136(G)

Implementing statutes: A.R.S. §§ 32-2803, 32-2804, 32-2811 through 32-2819, 32-2821, 32-2824 and 36-2841 through 32-2843

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately on the filing of the Notice of Final Expedited Rulemaking pursuant to A.R.S. § 41-1027(H). The effective date is (to be filled in by Register editor).

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 3067, October 18, 2024

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 3435, November 15, 2024

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

Name: Megan Whitby, Deputy Assistant Director
Address: Arizona Department of Health Services
Public Health Licensing Services
Health Care Institutions Licensing
150 N. 18th Ave., Suite 400
Phoenix, AZ 85007
Telephone: (602) 364-3052
Fax: (602) 364-2079
E-mail: Megan.Whitby@azdhs.gov

or

Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007-3232
Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stacie.Gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) Title 9, Chapter 28, Article 2, provides for the certification of different classes of radiation technologists. The Arizona Department of Health Services (Department) has adopted rules for certification of radiation technologists in Arizona Administrative Code (A.A.C.) Title 9, Chapter 16, Article 6. The Department had identified several rules that require changes to update incorporations by reference to the current national standards. Other changes are needed to correct cross-references, to improve clarity and understandability, and to make the rules more effective. The Department believes that these changes may also reduce the administrative burden of the rules. After obtaining approval for the rulemaking according to A.R.S. § 41-1039(A), the Department is revising the rules to address the identified issues.

8. 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 or rely on any study for this rulemaking.

9. 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

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

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

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the

rulemaking and the agency response to the comments:

No comments were received.

13. 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 Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

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:

These rules are based on state statutes, rather than on federal requirements, except for those federal requirements related to mammography, such as 21 CFR 900.12. The rules are consistent with, and not more stringent that these federal requirements.

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 business competitiveness analysis was received by the Department.

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

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES

OCCUPATIONAL LICENSING

ARTICLE 6. RADIATION TECHNOLOGISTS

Section

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-601. Definitions

In addition to the definitions in A.R.S. § 32-2801, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means:
   a. An individual who submits an application ~~packet~~, or
   b. A person who submits a request for approval of a radiation technologist training program.
2. "Application ~~packet~~" means the information, documents, and fees required by the Department for a certificate or permit.
3. "ARRT" means the American Registry of Radiologic Technologists.
4. "Authorized user" means the same as in A.A.C. R9-7-102.
5. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time beings to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "CBRPA" means the Certification Board for Radiology Practitioner Assistants.
7. "Certification" means the issuing of a certificate.
8. "Chest radiography" means radiography performed to visualize the heart and lungs only.
9. "Continuing education" means a course or learning activity that provides instruction and training designed to develop or improve the professional competence of a certificate holder related to the certificate holder's scope of practice.
10. "Contrast media" means material intentionally administered to a human body to define a part or parts of the human body that are not normally radiographically visible.
11. "Department-approved educational program" means a curriculum of courses and learning activities that is accredited by a nationally recognized accreditation body or granted approval through the Department.

12. "Department-approved examination" means a test administered through ARRT, NMTCB, ISCD, or CBRPA.
13. "Extremity" means the same as in A.A.C. R9-7-102.
14. "Fluoroscopy" means the use of radiography to directly visualize internal structures of the human body, the motion of internal structures, and fluids in real time, or near real-time, to aid in the treatment or diagnosis of disease or the performance of other medical procedures.
15. "ISCD" means the International Society for Clinical Densitometry.
16. "Nationally recognized accreditation body" means ARRT, NMTCB, ISCD, or CBRPA.
17. "NMTCB" means the Nuclear Medicine Technology Certification Board.
18. "Radiograph" means the record of an image, representing anatomical details of a part of a human body examined through the use of ionizing radiation, formed by the differential absorption of ionizing radiation within the part of the human body.
19. "Radiography" means the use of ionizing radiation in making radiographs.
20. "Radiopharmaceutical agent" means a radionuclide or radionuclide compound designed and prepared for administration to human beings.

R9-16-602. Training Programs

A. The Department shall maintain a list of Department-approved educational programs according to A.R.S. § 32-2804 on the Department's website at https://www.azdhs.gov/licensing/special/index.php#mrt-approved-schools.

B. An applicant may request Department approval of a curriculum of courses and learning activities as a training program by submitting an application ~~packet~~ that contains:

1. An application, in a Department-provided format, that includes:
   a. The name and address of the school providing the training program;
   b. The name, title, telephone number, and e-mail address of the administrator or designee of the school; and
   c. A list of each training program for which approval is being requested, including the number of hours of instruction provided for each;
2. A copy of the curriculum that includes course titles and course descriptions; and
3. A list of instructors providing the instruction and the credentials of each.

C. The Department shall:

1. Review each application ~~packet~~ according to R9-16-621; and
2. If approved, add the applicant's school to the list of Department-approved educational programs in subsection (A).

D. If an applicant for certification or permit did not complete a Department-approved educational program, the applicant may submit to the Department a copy of the curriculum for the training program completed by the applicant with the applicant's application ~~packet~~ in R9-16-606(B), R9-16-607(A), or R9-16-609(A).

R9-16-603. Practical Technologist in Radiology - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in radiology if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has completed a training program in radiologic technology through a Department-approved educational program and achieved a score of at least 67% on a Department-approved examination; or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in radiology shall:

1. Follow the standards specified for a Limited X-Ray Machine Operator in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Limited X-Ray Machine Operator~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments;
2. Perform only:
   a. Chest radiography, and
   b. Radiography of the extremities; and
3. Not use fluoroscopy or contrast media.

R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in podiatry if the individual:

1. Is at least 18 years of age; and

2. Either:

a. Has:

i. Completed a training program in podiatry radiology through a Department-approved educational program;

ii. Received a signed and dated attestation from a podiatrist licensed according to A.R.S. Title 32, Chapter 7, verifying that the applicant:

(1) Completed training under the direction of the licensed podiatrist, and

(2) Is proficient in independently taking radiographs; and

iii. Achieved a score of at least 70% on a Department-approved examination; or

b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in podiatry shall:

1. Follow the standards specified for a Limited X-Ray Machine Operator in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Limited X-Ray Machine Operator~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments; and

2. Only perform radiographic examinations of the lower leg, ankle, and foot, without the use of fluoroscopy or contrast media.

R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in bone densitometry if the individual:

1. Is at least 18 years of age; and

2. Either:

a. Has completed a training program in bone densitometry through a Department-approved educational program and achieved a score of at least 70% on a Department-approved examination, or

b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in bone densitometry shall:

1. Follow the standards specified for Bone Densitometry in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Bone Densitometry~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_bd.pdf?sfvrsn=11e176d0_22~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Apply ionizing radiation only to a person's hips, spine, and extremities through the use of a bone density machine without the use of fluoroscopy or contrast media.

R9-16-606. Application for Examination

A. An individual may apply for examination if the individual meets eligibility criteria for a:

1. Practical technologist in radiology listed in R9-16-603(A);
2. Practical technologist in podiatry listed in R9-16-604(A); or
3. Practical technologist in bone densitometry listed in R9-16-605(A).

B. An applicant for examination shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required in R9-16-619;
2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program; and
3. For an applicant for examination as a practical technologist in podiatry, the attestation specified in R9-16-604(A)(2)(a)(ii).

C. The Department shall approve or deny an individual's application for examination according to R9-16-621.

D. If the Department determines that the application ~~packet~~ submitted under subsection (B) is complete and in compliance, the Department shall notify the applicant that the applicant is approved to test.

E. Upon notification by the Department according to subsection (D), and applicant:

1. Shall arrange testing through ARRT, and

2. Has six months to complete testing before the applicant is required to re-apply for examination.

R9-16-607. Application for Initial Certification as a Practical Technologist in Radiology, Practical Technologist in Podiatry, or Practical Technologist in Bone Densitometry

A. Except as provided in subsection (B), an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required in R9-16-619;
2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program;
3. Documentation of achieving the applicable minimum score on a Department-approved examination;
4. For an application for a practical technologist in podiatry, the signed attestation in R9-16-604(A)(2)(a)(ii) containing:
   a. The name and date of birth of the applicant,
   b. The name and license number of the licensed podiatrist,
   c. A statement by the licensed podiatrist verifying completion of the applicant's clinical training and approval of radiographic images taken by the applicant, and
   d. The licensed podiatrist's signature and date; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application ~~packet~~ to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;

b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);

c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have ~~an~~ any complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-608. Radiologic Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist if the individual:

1. Is at least 18 years of age; and
2. Satisfies one of the following:
   a. Holds current applicable ARRT or NMTCB certification,
   b. Has completed a Department-approved educational program in radiation technology and has a passing score on a Department-approved examination, or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a radiologic technologist shall follow the standards specified for Radiography in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Radiography~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_rad.pdf?sfvrsn=13e176d0_18~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments.

C. An individual certified as a nuclear medicine technologist shall:

1. Follow the standards specified for Nuclear Medicine in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Nuclear Medicine~~ Practice

Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_nm.pdf?sfvrsn=1ee176d0_14~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments; and

2. Use radiopharmaceutical agents on humans for diagnostic or therapeutic purposes only.

D. An individual certified as a radiation therapy technologist shall follow the standards specified for Radiation Therapy in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Radiation Therapy~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_rt.pdf?sfvrsn=18e076d0_16~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments.

R9-16-609. Application for Initial Certification as a Radiation Technologist, Nuclear Medicine Technologist, or Radiation Therapy Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
   a. A copy of the applicant's current ARRT or NMTCB certification; or
   b. Documentation of:
      i. Completing a Department-approved educational program, except as provided in R9-16-602(D); and
      ii. Having a passing score on a Department-approved examination; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application ~~packet~~ to the Department

that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
   b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
   c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have ~~an~~ any complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a mammographic technologist if the individual:

1. Is at least 18 years of age;
2. Possesses a current Department-issued certification in radiologic technology; and
3. Satisfies one of the following:
   a. Holds a current ARRT certification in mammography;
   b. Meets the initial training and education requirements in 21 CFR 900.12 and has a passing score on a Department-approved examination in mammography, or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a mammographic technologist:

1. Shall follow the standards specified for Mammography in the ~~2019~~ American

Society of Radiologic Technologists (ASRT) ~~Mammography~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_mamm.pdf?sfvrsn=10e076d0_16~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments; and

2. May perform diagnostic mammography or screening mammography, as defined in A.R.S. § 30-651.

R9-16-611. Student Mammography Permits

A. Before beginning the initial training in 21 CFR 900.12 under R9-16-610(A)(3)(b), an individual shall obtain a student mammography permit from the Department.

B. An applicant for a student mammography permit shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required under R9-16-619; and
2. A Department-provided agreement form that includes the following:
   a. The name and date of birth of the applicant;
   b. The name, license number, e-mail address, and telephone number of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology;
   c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
   d. The licensed radiologist's signature and date of signing.

C. The Department shall approve or deny an individual's application for a student mammography permit according to R9-16-621.

D. A student mammography permit is valid for one year from the date issued and may not be renewed.

R9-16-612. Application for Initial Certification as a Mammographic Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a mammographic technologist shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required in R9-16-619;
2. The applicant's current radiology technologist certificate number;

3. The applicant's current student mammography permit number, if applicable;
4. Either:
    a. A copy of current ARRT certification in mammography; or
    b. Documentation of:
        i. Completing of initial education and training that meets the requirements specified in 21 CFR 900.12, and
        ii. Having a passing score on a Department-approved examination in mammography; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a mammographic technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application ~~packet~~ to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a mammographic technologist issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified as a mammographic technologist in another state for at least one year;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    d. Does not have ~~an~~ any complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a mammographic technologist according to R9-16-621.

R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a computed tomography

technologist if the individual:

1. Is at least 18 years of age;
2. Possesses a current Department-issued certification as a radiologic technologist or nuclear medicine technologist; and
3. Satisfies one of the following:
   a. Holds a current ARRT or NMTCB certification in computed tomography,
   b. Has completed two years of training in computed tomography and twelve hours of computed tomography-specific education, or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a computed tomography technologist:

1. Shall follow the standards specified for Computed Tomography in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Computed Tomography~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_ct.pdf?sfvrsn=9e076d0_16~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. May apply ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

R9-16-614. Application for Computed Tomography Technologist Preceptorship and Temporary Certification

A. Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.

B. An applicant for a computed tomography preceptorship certificate shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required under R9-16-619;
2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
   a. The name and date of birth of the applicant;
   b. The name, license number, e-mail address, and telephone number of the

licensed radiologist;

c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and

d. The licensed radiologist's signature and date of signing; and

3. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for a computed tomography preceptorship certificate according to R9-16-621.

D. A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.

E. At least 30 days before the expiration of an individual's computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary certificate by submitting an application ~~packet~~ to the Department that includes:

1. The information and documents required under R9-16-619;

2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:

a. The name and date of birth of the applicant;

b. The name, license number, e-mail address, and telephone number of the licensed radiologist;

c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and

d. The licensed radiologist's signature and date of signing; and

3. The applicable fee in R9-16-623.

F. The Department shall approve or deny an individual's application for a computed tomography temporary certificate according to R9-16-621.

G. A computed tomography temporary certificate is valid for one year and may not be renewed.

R9-16-615. Application for Initial Certification for a Computed Tomography Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a computed tomography technologist shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required in R9-16-619;

2. The applicant's current radiation technologist or nuclear medicine technologist certificate number;
3. The applicant's computed tomography preceptorship number or temporary certificate number, if applicable;
4. Either:
    a. A copy of the applicant's current ARRT or NMTCB certification in computed tomography; or
    b. Documentation of completion of:
        i. Two years of training in computed tomography, and
        ii. Twelve hours of computed tomography-specific education; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a computed tomography technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application ~~packet~~ to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a computed tomography technologist issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified as a computed tomography technologist in another state for at least one year;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    d. Does not have ~~an~~ any complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a computed tomography technologist according to R9-16-621.

R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a radiologist assistant if the individual:

1. Is at least 18 years of age; and
2. Satisfies one of the following:
   a. Holds a current ARRT or CBRPA certification as a radiologist assistant;
   b. Has:
      i. Completed a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
      ii. Achieved a passing score on an ARRT or a CBRPA examination for radiologist assistants; or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a radiologist assistant:

1. Shall follow the standards specified for Radiologist Assistant in the ~~2019~~ American Society of Radiologic Technologists (ASRT) ~~Radiologist Assistant~~ Practice Standards for Medical Imaging and Radiation Therapy, effective June 30, 2024, available at ~~https://www.asrt.org/docs/default-source/practice-standards-published/ps_raa.pdf?sfvrsn=1ae076d0_16~~ https://www.asrt.org/main/standards-and-regulations/professional-practice/practice-standards-online, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. May perform the following procedures under the direction of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology:
   a. Fluoroscopy;
   b. Assessment and evaluation of the physiological and psychological responsiveness of individuals undergoing radiologic procedures;
   c. Evaluation of image quality, making initial image observations and communicating observations to the supervising radiologist; and
   d. Administration of contrast media or other medications prescribed by the supervising radiologist.

C. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies.

R9-16-617. Application for Initial Certification as a Radiologist Assistant

A. Except as provided in subsection (B), an applicant for initial certification as a radiologist assistant shall submit an application ~~packet~~ to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
    a. The applicant's current ARRT or CBRPA certification as a radiologist assistant; or
    b. Documentation of:
        i. Completing a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
        ii. Having a passing score an ARRT or a CBRPA examination for radiologist assistants; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiologist assistant may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application ~~packet~~ to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a radiologist assistant issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified as a radiologist assistant in another state for at least one year;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have ~~an~~ any complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a radiologist assistant according to R9-16-621.

R9-16-618. Special Permits

A. An applicant for a special permit under A.R.S. § 32-2814(B) shall submit an application ~~packet~~ to the Department containing:

1. The information and documents required in R9-16-619;
2. An attestation, in a Department-provided format, from the health care institution in which the applicant proposes to practice:
   a. Stating that the requesting health care institution is located in an Arizona medically underserved area, AzMUA, as defined in A.A.C. R9-15-101(4), or a health professional shortage area, HPSA, as defined in A.A.C. R9-15-101(25);
   b. Verifying that the health care institution developed and is implementing a program of continuing education for the applicant to protect the health and safety of individuals undergoing radiologic procedures; and
   c. Signed and dated by the health care institution's administrator or designee; and
3. A letter signed by the health care institution's administrator or designee that provides justification for the issuance of a special permit.

B. The Department shall approve or deny an application for a special permit according to R9-16-621.

C. A special permit is valid for no more than one year, but may be renewed as provided in subsection (A) if the circumstances justifying the issuance of a special permit have not changed.

R9-16-619. Application Information

An applicant for certification shall submit to the Department:

1. The following information in a Department-provided format:
   a. The applicant's name;
   b. The applicant's residential address and, if different, mailing address;

c. The applicant's telephone number;

d. The applicant's e-mail address;

e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;

f. The applicant's date of birth;

g. The applicant's current employment in the radiation technology field, if applicable, including:

   i. The employer's name,

   ii. The applicant's position,

   iii. Dates of employment,

   iv. The address of the employer,

   v. The supervisor's name,

   vi. The supervisor's email address, and

   vii. The supervisor's telephone number;

h. The applicant's educational history related to radiation technology, including:

   i. The name and address of each educational institution,

   ii. The degree or certification received, and

   iii. The applicant's date of graduation;

i. The type of certificate being applied for;

j. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;

k. If the applicant has been convicted of a felony or a misdemeanor:

   i. The date of the conviction,

   ii. The state or jurisdiction of the conviction,

   iii. An explanation of the crime of which the applicant was convicted, and

   iv. The disposition of the case;

l. Whether the applicant holds other professional licenses or certifications and, if so:

   i. The professional license or certification, and

   ii. The state in which the professional license or certification was issued;

m. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;

n. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;

o. An attestation that the information submitted as part of an application ~~packet~~ is true and accurate; and

p. The applicant's signature and date of signing;

2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:

a. The date of the disciplinary action, revocation, or suspension;

b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and

c. An explanation of the disciplinary action, revocation, or suspension;

3. If the applicant is currently ineligible for licensing or certification in any state because of a license revocation or suspension, documentation that includes:

a. The date of the ineligibility for licensing or certification,

b. The state or jurisdiction of the ineligibility for licensing or certification, and

c. An explanation of the ineligibility for licensing or certification; and

4. Documentation for the applicant that complies with A.R.S. § 41-1080.

R9-16-620. Renewal of Certification

A. Certifications issued under R9-16-607, R9-16-609, R9-16-612, R9-16-615, and R9-16-617 are valid for two years after issuance, unless revoked.

B. A certificate holder may apply to renew a certification:

1. Within 90 days before the expiration date of the certificate holder's current certification;

2. Within the 30-day period after the expiration date of the certificate holder's certification, if the certificate holder pays the late renewal penalty fee in R9-16-623; or

3. Within the extension time period granted under A.R.S. § 32-4301.

C. An applicant for renewal of a certification shall submit to the Department an application

~~packet~~, including:

1. The following in a Department-provided format:
    a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
    b. The applicant's current certification number and type;
    c. The applicant's current employment in the radiation technology field, if applicable, including:
        i. The employer's name,
        ii. The applicant's position,
        iii. Dates of employment,
        iv. The address of the employer,
        v. The supervisor's name,
        vi. The supervisor's email address, and
        vii. The supervisor's telephone number;
    d. Whether the applicant has, within the two years before the date of the application, had:
        i. A certificate issued under this Article suspended or revoked; or
        ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;
    e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
    f. Attestation that all the information submitted as part of the application ~~packet~~ is true and accurate; and
    g. The applicant's signature and date of signature;
2. As applicable:
    a. For renewal of certification as a mammographic technologist, documentation that meets the requirements in A.R.S. § 32-2841(E); or
    b. For renewal of all other certifications issued under this Article, either:
        i. An attestation that the applicant completed continuing education required under A.R.S. § 32-2815(D) and that documentation of completion is available upon request, signed and dated by the applicant; or
        ii. A copy of the applicant's current certification from a nationally

recognized accreditation body; and

3. The applicable renewal fee and, if applicable, the late renewal penalty fee required in R9-16-623.

D. The Department shall approve or deny an application for recertification according to R9-16-621.

R9-16-621. Review Time-frames

A. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

1. The administrative completeness review time-frame begins on the date the Department receives an application ~~packet~~ required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    a. If an application ~~packet~~ is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application ~~packet~~.
    b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
    c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application ~~packet~~ withdrawn.
3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of

administrative completeness.

C. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
    a. The Department may make one comprehensive written request for additional information or documentation; and
    b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or permit.

D. An applicant who is denied a certificate or permit may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 6.1. Time-frames

Type of Application	Administrative Completeness Review Time-frame (in Calendar Days)	Substantive Review Time-frame (in Calendar Days)	Overall Time-frame (in Calendar Days)
Application for Examination	30	30	60
Initial Certificate	30	30	60
Renewal Certificate	30	30	60
Student Mammography Permit	30	30	60
Computed Tomography Preceptorship Certificate or Computed Tomography Temporary Certificate	30	30	60
Special Permit	30	30	60
Name Change	30	30	60
School Approval	60	60	120

R9-16-622. Changes Affecting a Certificate or Certificate Holder~~; Request for a Duplicate Certificate~~

A. A certificate holder shall notify the Department in writing, within 30 calendar days after the effective date of a change in:

1. The certificate holder's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address;
2. The certificate holder's name~~, including a copy of the legal document establishing the certificate holder~~'s new name; or
3. The certificate holder's employer, including the name and address of the new employer.

B. A certificate holder ~~may obtain~~ notifying the Department of a name change according to subsection (A)(2) shall request a ~~duplicate~~ revised certificate issued with the certificate holder's new name by submitting to the Department:

1. ~~A written request for a duplicate~~ An application for a revised certificate, in a

Department-provided format, that includes:

a. The certificate holder's name and address as included in Department records,

b. The certificate holder's certificate number and expiration date,

c. The certificate holder's new name, and

~~c.~~d. The certificate holder's signature and date of signature;

2. A copy of the legal document establishing the certificate holder's new name; and

~~2.~~3. The ~~duplicate~~ revised certificate fee in R9-16-623.

C. A certificate holder may submit to the Department, either as a separate written document or as part of the renewal application, a signed and dated request to transfer to inactive status or retirement status under A.R.S. § 32-2816(F).

R9-16-623. Fees

A. Except as provided in subsection (C) or (D), an applicant shall submit to the Department the following nonrefundable fees for:

1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, $100;
2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, $100;
3. An initial application or renewal application for certification as a mammographic technologist, $20;
4. A computed tomography preceptorship certificate or computed tomography temporary certificate, $10;
5. An initial application or renewal application for certification as a computed tomography technologist, $20;
6. An initial application or renewal application for certification as a radiologist assistant, $100; and
7. A late renewal penalty fee according to A.R.S. § 32-2816(C), $50.

B. The fee for a ~~duplicate~~ revised certificate is $10.

C. An applicant for initial certification is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application ~~packet~~ in R9-16-607, R9-16-609, R9-16-612, R9-16-615, or R9-16-617, submits an attestation that the

applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

D. As allowed under A.R.S. § 32-2816(F), a certificate holder is not required to submit a fee for renewal of certification if the certificate holder submits to the Department an affidavit stating that the certificate holder:

1. Is retired from the practice of radiologic technology, or
2. Requests to be placed on inactive status.

R9-16-624. Enforcement

A. The Department may, as applicable:

1. Deny, revoke, or suspend a certificate or permit under A.R.S. § ~~36-2821~~ 32-2821;
2. Request an injunction under A.R.S. § ~~36-2825~~ 32-2825; or
3. Assess a civil money penalty under A.R.S. § ~~36-2821~~ 32-2821.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of individuals affected by the violations,
6. The degree of harm to an individual,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder or permittee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

ARTICLE 6. RADIATION TECHNOLOGISTS

Section

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-601. Definitions

In addition to the definitions in A.R.S. § 32-2801, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means:
   a. An individual who submits an application packet, or
   b. A person who submits a request for approval of a radiation technologist training program.
2. "Application packet" means the information, documents, and fees required by the Department for a certificate or permit.
3. "ARRT" means the American Registry of Radiologic Technologists.
4. "Authorized user" means the same as in A.A.C. R9-7-102.
5. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time beings to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "CBRPA" means the Certification Board for Radiology Practitioner Assistants.
7. "Certification" means the issuing of a certificate.
8. "Chest radiography" means radiography performed to visualize the heart and lungs only.
9. "Continuing education" means a course or learning activity that provides instruction and training designed to develop or improve the professional competence of a certificate holder related to the certificate holder's scope of practice.
10. "Contrast media" means material intentionally administered to a human body to define a part or parts of the human body that are not normally radiographically visible.
11. "Department-approved educational program" means a curriculum of courses and learning activities that is accredited by a nationally recognized accreditation body or granted approval through the Department.

12. "Department-approved examination" means a test administered through ARRT, NMTCB, ISCD, or CBRPA.
13. "Extremity" means the same as in A.A.C. R9-7-102.
14. "Fluoroscopy" means the use of radiography to directly visualize internal structures of the human body, the motion of internal structures, and fluids in real time, or near real-time, to aid in the treatment or diagnosis of disease or the performance of other medical procedures.
15. "ISCD" means the International Society for Clinical Densitometry.
16. "Nationally recognized accreditation body" means ARRT, NMTCB, ISCD, or CBRPA.
17. "NMTCB" means the Nuclear Medicine Technology Certification Board.
18. "Radiograph" means the record of an image, representing anatomical details of a part of a human body examined through the use of ionizing radiation, formed by the differential absorption of ionizing radiation within the part of the human body.
19. "Radiography" means the use of ionizing radiation in making radiographs.
20. "Radiopharmaceutical agent" means a radionuclide or radionuclide compound designed and prepared for administration to human beings.

R9-16-602. Training Programs

A. The Department shall maintain a list of Department-approved educational programs according to A.R.S. § 32-2804 on the Department's website at https://www.azdhs.gov/licensing/special/index.php#mrt-approved-schools.

B. An applicant may request Department approval of a curriculum of courses and learning activities as a training program by submitting an application packet that contains:

1. An application, in a Department-provided format, that includes:
   a. The name and address of the school providing the training program;
   b. The name, title, telephone number, and e-mail address of the administrator or designee of the school; and
   c. A list of each training program for which approval is being requested, including the number of hours of instruction provided for each;
2. A copy of the curriculum that includes course titles and course descriptions; and
3. A list of instructors providing the instruction and the credentials of each.

C. The Department shall:

1. Review each application packet according to R9-16-621; and
2. If approved, add the applicant's school to the list of Department-approved educational programs in subsection (A).

D. If an applicant for certification or permit did not complete a Department-approved educational program, the applicant may submit to the Department a copy of the curriculum for the training program completed by the applicant with the applicant's application packet in R9-16-606(B), R9-16-607(A), or R9-16-609(A).

R9-16-603. Practical Technologist in Radiology - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in radiology if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has completed a training program in radiologic technology through a Department-approved educational program and achieved a score of at least 67% on a Department-approved examination; or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in radiology shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments;
2. Perform only:
   a. Chest radiography, and
   b. Radiography of the extremities; and
3. Not use fluoroscopy or contrast media.

R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in podiatry if the individual:

1. Is at least 18 years of age; and

2. Either:
   a. Has:
      i. Completed a training program in podiatry radiology through a Department-approved educational program;
      ii. Received a signed and dated attestation from a podiatrist licensed according to A.R.S. Title 32, Chapter 7, verifying that the applicant:
         (1) Completed training under the direction of the licensed podiatrist, and
         (2) Is proficient in independently taking radiographs; and
      iii. Achieved a score of at least 70% on a Department-approved examination; or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in podiatry shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Only perform radiographic examinations of the lower leg, ankle, and foot, without the use of fluoroscopy or contrast media.

R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice

A. An individual is eligible for certification as a practical technologist in bone densitometry if the individual:

1. Is at least 18 years of age; and
2. Either:
   a. Has completed a training program in bone densitometry through a Department-approved educational program and achieved a score of at least 70% on a Department-approved examination, or
   b. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a practical technologist in bone densitometry shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Bone Densitometry Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_bd.pdf?sfvrsn=11e176d0_22, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Apply ionizing radiation only to a person's hips, spine, and extremities through the use of a bone density machine without the use of fluoroscopy or contrast media.

R9-16-606. Application for Examination

A. An individual may apply for examination if the individual meets eligibility criteria for a:
1. Practical technologist in radiology listed in R9-16-603(A);
2. Practical technologist in podiatry listed in R9-16-604(A); or
3. Practical technologist in bone densitometry listed in R9-16-605(A).

B. An applicant for examination shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program; and
3. For an applicant for examination as a practical technologist in podiatry, the attestation specified in R9-16-604(A)(2)(a)(ii).

C. The Department shall approve or deny an individual's application for examination according to R9-16-621.

D. If the Department determines that the application packet submitted under subsection (B) is complete and in compliance, the Department shall notify the applicant that the applicant is approved to test.

E. Upon notification by the Department according to subsection (D), and applicant:
1. Shall arrange testing through ARRT, and
2. Has six months to complete testing before the applicant is required to re-apply for examination.

R9-16-607. Application for Initial Certification as a Practical Technologist in Radiology, Practical Technologist in Podiatry, or Practical Technologist in Bone

Densitometry

A. Except as provided in subsection (B), an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program;
3. Documentation of achieving the applicable minimum score on a Department-approved examination;
4. For an application for a practical technologist in podiatry, the signed attestation in R9-16-604(A)(2)(a)(ii) containing:
    a. The name and date of birth of the applicant,
    b. The name and license number of the licensed podiatrist,
    c. A statement by the licensed podiatrist verifying completion of the applicant's clinical training and approval of radiographic images taken by the applicant, and
    d. The licensed podiatrist's signature and date; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    c. Has not voluntarily surrendered a license or certification in any other

state or country while under investigation for unprofessional conduct; and

d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-608. Radiologic Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist if the individual:

1. Is at least 18 years of age; and
2. Satisfies one of the following:
   a. Holds current applicable ARRT or NMTCB certification,
   b. Has completed a Department-approved educational program in radiation technology and has a passing score on a Department-approved examination, or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a radiologic technologist shall follow the standards specified in the 2019 American Society of Radiologic Technologists Radiography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_rad.pdf?sfvrsn=13e176d0_18, incorporated by reference, on file with the Department, and including no future editions or amendments.

C. An individual certified as a nuclear medicine technologist shall:

1. Follow the standards specified in the 2019 American Society of Radiologic Technologists Nuclear Medicine Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_nm.pdf?sfvrsn=1ee176d0_14, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Use radiopharmaceutical agents on humans for diagnostic or therapeutic purposes only.

D. An individual certified as a radiation therapy technologist shall follow the standards specified in the 2019 American Society of Radiologic Technologists Radiation Therapy Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_rt.pdf?sfvrsn=18e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments.

R9-16-609. Application for Initial Certification as a Radiation Technologist, Nuclear Medicine Technologist, or Radiation Therapy Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. Either:
    a. A copy of the applicant's current ARRT or NMTCB certification; or
    b. Documentation of:
        i. Completing a Department-approved educational program, except as provided in R9-16-602(D); and
        ii. Having a passing score on a Department-approved examination; and
3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
    a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
    b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. §

32-4302(A)(3);

c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and

d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and

4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a mammographic technologist if the individual:

1. Is at least 18 years of age;
2. Possesses a current Department-issued certification in radiologic technology; and
3. Satisfies one of the following:
   a. Holds a current ARRT certification in mammography;
   b. Meets the initial training and education requirements in 21 CFR 900.12 and has a passing score on a Department-approved examination in mammography, or
   c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a mammographic technologist:

1. Shall follow the standards specified in the 2019 American Society of Radiologic Technologists Mammography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_mamm.pdf?sfvrsn=10e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. May perform diagnostic mammography or screening mammography, as defined in A.R.S. § 30-651.

R9-16-611. Student Mammography Permits

A. Before beginning the initial training in 21 CFR 900.12 under R9-16-610(A)(3)(b), an

individual shall obtain a student mammography permit from the Department.

B. An applicant for a student mammography permit shall submit an application packet to the Department that includes:

1. The information and documents required under R9-16-619; and
2. A Department-provided agreement form that includes the following:
    a. The name and date of birth of the applicant;
    b. The name, license number, e-mail address, and telephone number of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology;
    c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
    d. The licensed radiologist's signature and date of signing.

C. The Department shall approve or deny an individual's application for a student mammography permit according to R9-16-621.

D. A student mammography permit is valid for one year from the date issued and may not be renewed.

R9-16-612. Application for Initial Certification as a Mammographic Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a mammographic technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. The applicant's current radiology technologist certificate number;
3. The applicant's current student mammography permit number, if applicable;
4. Either:
    a. A copy of current ARRT certification in mammography; or
    b. Documentation of:
        i. Completing of initial education and training that meets the requirements specified in 21 CFR 900.12, and
        ii. Having a passing score on a Department-approved examination in mammography; and
5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a mammographic technologist may be eligible

for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a mammographic technologist issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified as a mammographic technologist in another state for at least one year;
   b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
   c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a mammographic technologist according to R9-16-621.

R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a computed tomography technologist if the individual:

1. Is at least 18 years of age;
2. Possesses a current Department-issued certification as a radiologic technologist or nuclear medicine technologist; and
3. Satisfies one of the following:
   a. Holds a current ARRT or NMTCB certification in computed tomography,
   b. Has completed two years of training in computed tomography and twelve hours of computed tomography-specific education, or

c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a computed tomography technologist:

1. Shall follow the standards specified in the 2019 American Society of Radiologic Technologists Computed Tomography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_ct.pdf?sfvrsn=9e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. May apply ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

R9-16-614. Application for Computed Tomography Technologist Preceptorship and Temporary Certification

A. Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.

B. An applicant for a computed tomography preceptorship certificate shall submit an application packet to the Department that includes:

1. The information and documents required under R9-16-619;
2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
   a. The name and date of birth of the applicant;
   b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
   c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
   d. The licensed radiologist's signature and date of signing; and
3. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for a computed tomography preceptorship certificate according to R9-16-621.

D. A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.

E. At least 30 days before the expiration of an individual's computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary

certificate by submitting an application packet to the Department that includes:

1. The information and documents required under R9-16-619;
2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
    a. The name and date of birth of the applicant;
    b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
    c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
    d. The licensed radiologist's signature and date of signing; and
3. The applicable fee in R9-16-623.

F. The Department shall approve or deny an individual's application for a computed tomography temporary certificate according to R9-16-621.

G. A computed tomography temporary certificate is valid for one year and may not be renewed.

R9-16-615. Application for Initial Certification for a Computed Tomography Technologist

A. Except as provided in subsection (B), an applicant for initial certification as a computed tomography technologist shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;
2. The applicant's current radiation technologist or nuclear medicine technologist certificate number;
3. The applicant's computed tomography preceptorship number or temporary certificate number, if applicable;
4. Either:
    a. A copy of the applicant's current ARRT or NMTCB certification in computed tomography; or
    b. Documentation of completion of:
        i. Two years of training in computed tomography, and
        ii. Twelve hours of computed tomography-specific education; and

5. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a computed tomography technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a computed tomography technologist issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified as a computed tomography technologist in another state for at least one year;
   b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
   c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a computed tomography technologist according to R9-16-621.

R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice

A. An individual is eligible to apply for initial certification as a radiologist assistant if the individual:

1. Is at least 18 years of age; and
2. Satisfies one of the following:
   a. Holds a current ARRT or CBRPA certification as a radiologist assistant;
   b. Has:
      i. Completed a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that

encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and

ii. Achieved a passing score on an ARRT or a CBRPA examination for radiologist assistants; or

c. Meets the criteria in A.R.S. § 32-4302(A).

B. An individual certified as a radiologist assistant:

1. Shall follow the standards specified the 2019 American Society of Radiologic Technologists Radiologist Assistant Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_raa.pdf?sfvrsn=1ae076d0_16, incorporated by reference on file with the Department, and including no future editions or amendments; and

2. May perform the following procedures under the direction of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology:

a. Fluoroscopy;

b. Assessment and evaluation of the physiological and psychological responsiveness of individuals undergoing radiologic procedures;

c. Evaluation of image quality, making initial image observations and communicating observations to the supervising radiologist; and

d. Administration of contrast media or other medications prescribed by the supervising radiologist.

C. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies.

R9-16-617. Application for Initial Certification as a Radiologist Assistant

A. Except as provided in subsection (B), an applicant for initial certification as a radiologist assistant shall submit an application packet to the Department that includes:

1. The information and documents required in R9-16-619;

2. Either:

a. The applicant's current ARRT or CBRPA certification as a radiologist assistant; or

b. Documentation of:

i. Completing a baccalaureate degree or post-baccalaureate

certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and

ii. Having a passing score an ARRT or a CBRPA examination for radiologist assistants; and

3. The applicable fee in R9-16-623.

B. If an applicant for initial certification as a radiologist assistant may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
2. Documentation of the license or certification as a radiologist assistant issued to the applicant by each state in which the applicant holds the license or certification;
3. A statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified as a radiologist assistant in another state for at least one year;
   b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
   c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.

C. The Department shall approve or deny an individual's application for initial certification as a radiologist assistant according to R9-16-621.

R9-16-618. Special Permits

A. An applicant for a special permit under A.R.S. § 32-2814(B) shall submit an application packet to the Department containing:

1. The information and documents required in R9-16-619;

2. An attestation, in a Department-provided format, from the health care institution in which the applicant proposes to practice:
    a. Stating that the requesting health care institution is located in an Arizona medically underserved area, as defined in A.A.C. R9-15-101(4), or a health professional shortage area, as defined in A.A.C. R9-15-101(25);
    b. Verifying that the health care institution developed and is implementing a program of continuing education for the applicant to protect the health and safety of individuals undergoing radiologic procedures; and
    c. Signed and dated by the health care institution's administrator or designee; and
3. A letter signed by the health care institution's administrator or designee that provides justification for the issuance of a special permit.

B. The Department shall approve or deny an application for a special permit according to R9-16-621.

C. A special permit is valid for no more than one year, but may be renewed as provided in subsection (A) if the circumstances justifying the issuance of a special permit have not changed.

R9-16-619. Application Information

An applicant for certification shall submit to the Department:

1. The following information in a Department-provided format:
    a. The applicant's name;
    b. The applicant's residential address and, if different, mailing address;
    c. The applicant's telephone number;
    d. The applicant's e-mail address;
    e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    f. The applicant's date of birth;
    g. The applicant's current employment in the radiation technology field, if applicable, including:
        i. The employer's name,
        ii. The applicant's position,
        iii. Dates of employment,

iv. The address of the employer,

v. The supervisor's name,

vi. The supervisor's email address, and

vii. The supervisor's telephone number;

h. The applicant's educational history related to radiation technology, including:

i. The name and address of each educational institution,

ii. The degree or certification received, and

iii. The applicant's date of graduation;

i. The type of certificate being applied for;

j. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;

k. If the applicant has been convicted of a felony or a misdemeanor:

i. The date of the conviction,

ii. The state or jurisdiction of the conviction,

iii. An explanation of the crime of which the applicant was convicted, and

iv. The disposition of the case;

l. Whether the applicant holds other professional licenses or certifications and, if so:

i. The professional license or certification, and

ii. The state in which the professional license or certification was issued;

m. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;

n. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;

o. An attestation that the information submitted as part of an application packet is true and accurate; and

p. The applicant's signature and date of signing;

2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate

within the previous five years, documentation that includes:

a. The date of the disciplinary action, revocation, or suspension;

b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and

c. An explanation of the disciplinary action, revocation, or suspension;

3. If the applicant is currently ineligible for licensing or certification in any state because of a license revocation or suspension, documentation that includes:

a. The date of the ineligibility for licensing or certification,

b. The state or jurisdiction of the ineligibility for licensing or certification, and

c. An explanation of the ineligibility for licensing or certification; and

4. Documentation for the applicant that complies with A.R.S. § 41-1080.

R9-16-620. Renewal of Certification

A. Certifications issued under R9-16-607, R9-16-609, R9-16-612, R9-16-615, and R9-16-617 are valid for two years after issuance, unless revoked.

B. A certificate holder may apply to renew a certification:

1. Within 90 days before the expiration date of the certificate holder's current certification;

2. Within the 30-day period after the expiration date of the certificate holder's certification, if the certificate holder pays the late renewal penalty fee in R9-16-623; or

3. Within the extension time period granted under A.R.S. § 32-4301.

C. An applicant for renewal of a certification shall submit to the Department an application packet, including:

1. The following in a Department-provided format:

a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;

b. The applicant's current certification number and type;

c. The applicant's current employment in the radiation technology field, if applicable, including:

i. The employer's name,

ii. The applicant's position,

iii. Dates of employment,
iv. The address of the employer,
v. The supervisor's name,
vi. The supervisor's email address, and
vii. The supervisor's telephone number;

d. Whether the applicant has, within the two years before the date of the application, had:
i. A certificate issued under this Article suspended or revoked; or
ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;

e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;

f. Attestation that all the information submitted as part of the application packet is true and accurate; and

g. The applicant's signature and date of signature;

2. As applicable:

a. For renewal of certification as a mammographic technologist, documentation that meets the requirements in A.R.S. § 32-2841(E); or

b. For renewal of all other certifications issued under this Article, either:
i. An attestation that the applicant completed continuing education required under A.R.S. § 32-2815(D) and that documentation of completion is available upon request, signed and dated by the applicant; or
ii. A copy of the applicant's current certification from a nationally recognized accreditation body; and

3. The applicable renewal fee and, if applicable, the late renewal penalty fee required in R9-16-623.

D. The Department shall approve or deny an application for recertification according to R9-16-621.

R9-16-621. Review Time-frames

A. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).

1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).

1. The administrative completeness review time-frame begins on the date the Department receives an application packet required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.
    b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
    c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.
3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
    a. The Department may make one comprehensive written request for

additional information or documentation; and

b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.

3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.

4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or permit.

D. An applicant who is denied a certificate or permit may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 6.1. Time-frames

Type of Application	Administrative Completeness Review Time-frame (in Calendar Days)	Substantive Review Time-frame (in Calendar Days)	Overall Time-frame (in Calendar Days)
Application for Examination	30	30	60
Initial Certificate	30	30	60
Renewal Certificate	30	30	60
Student Mammography Permit	30	30	60
Computed Tomography Preceptorship Certificate or Computed Tomography Temporary Certificate	30	30	60
Special Permit	30	30	60
School Approval	60	60	120

R9-16-622. Changes Affecting a Certificate or Certificate Holder; Request for a Duplicate Certificate

A. A certificate holder shall notify the Department in writing, within 30 calendar days after the effective date of a change in:

1. The certificate holder's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address;

2. The certificate holder's name, including a copy of the legal document establishing the certificate holder's new name; or

3. The certificate holder's employer, including the name and address of the new employer.

B. A certificate holder may obtain a duplicate certificate by submitting to the Department:

1. A written request for a duplicate certificate, in a Department-provided format, that includes:
   a. The certificate holder's name and address,
   b. The certificate holder's certificate number and expiration date, and
   c. The certificate holder's signature and date of signature; and
2. The duplicate certificate fee in R9-16-623.

C. A certificate holder may submit to the Department, either as a separate written document or as part of the renewal application, a signed and dated request to transfer to inactive status or retirement status under A.R.S. § 32-2816(F).

R9-16-623. Fees

A. Except as provided in subsection (C) or (D), an applicant shall submit to the Department the following nonrefundable fees for:

1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, $100;
2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, $100;
3. An initial application or renewal application for certification as a mammographic technologist, $20;
4. A computed tomography preceptorship certificate or computed tomography temporary certificate, $10;
5. An initial application or renewal application for certification as a computed tomography technologist, $20;
6. An initial application or renewal application for certification as a radiologist assistant, $100; and
7. A late renewal penalty fee according to A.R.S. § 32-2816(C), $50.

B. The fee for a duplicate certificate is $10.

C. An applicant for initial certification is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application packet in R9-16-607, R9-16-609, R9-16-612, R9-16-615, or R9-16-617, submits an attestation that the

applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

D. As allowed under A.R.S. § 32-2816(F), a certificate holder is not required to submit a fee for renewal of certification if the certificate holder submits to the Department an affidavit stating that the certificate holder:

1. Is retired from the practice of radiologic technology, or
2. Requests to be placed on inactive status.

R9-16-624. Enforcement

A. The Department may, as applicable:

1. Deny, revoke, or suspend a certificate or permit under A.R.S. § 36-2821;
2. Request an injunction under A.R.S. § 36-2825; or
3. Assess a civil money penalty under A.R.S. § 36-2821.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to public health and safety,
4. The number of violations,
5. The number of individuals affected by the violations,
6. The degree of harm to an individual,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A certificate holder or permittee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

Statutes Pertaining to 9 A.A.C. 16, Article 6

32-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Certificate" means a certificate that is granted and issued by the department.

2. "Certified technologist" means a person holding a certificate that is granted and issued by the department.

3. "Computed tomography technologist" means a person who applies ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

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

5. "Direction" means responsibility for and control of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

6. "Director" means the director of the department of health services.

7. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons and other nuclear particles or rays.

8. "Leg" means that part of the lower limb between the knee and the foot.

9. "Licensed practitioner" means a person who is licensed or otherwise authorized by law to practice medicine, dentistry, osteopathic medicine, podiatry, chiropractic or naturopathic medicine in this state.

10. "Mammographic technologist" means a person who applies ionizing radiation to the breasts of a human being for diagnostic purposes.

11. "Nuclear medicine technologist" means a person who uses radiopharmaceutical agents on humans for diagnostic or therapeutic purposes as set forth in rules adopted pursuant to section 32-2815.

12. "Practical technologist in bone densitometry" means a technologist who holds a certificate to apply ionizing radiation to a person's hips, spine and extremities through the use of a bone density machine.

13. "Practical technologist in podiatry" means a person holding a practical technologist in podiatry certificate that is granted and issued by the department.

14. "Practical technologist in podiatry certificate" means a certificate that is issued to a person, other than a licensed practitioner, who applies ionizing radiation to the foot and leg for diagnostic purposes while under the specific direction of a licensed practitioner.

15. "Practical technologist in radiology" means a person holding a practical technologist in radiology certificate that is granted and issued by the department.

16. "Practical technologist in radiology certificate" means a certificate that is issued to a person,

other than a licensed practitioner, who applies ionizing radiation to specific parts of the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

17. "Radiation therapy technologist" means a person who uses radiation on humans for therapeutic purposes.

18. "Radiologic technologist" means a person who holds a certificate that is issued by the department and that allows that person to apply ionizing radiation to individuals at the direction of a licensed practitioner for general diagnostic or therapeutic purposes.

19. "Radiologic technology" means the science and art of applying ionizing radiation to human beings for general diagnostic or therapeutic purposes.

20. "Radiologic technology certificate" means a certificate that is issued in radiologic technology to a person with at least twenty-four months of full-time study or its equivalent through an approved program and who has successfully completed an examination by a national certifying body.

21. "Radiologist" means a licensed practitioner of medicine or osteopathic medicine who has undertaken a course of training that meets the requirements for admission to the examination of the American board of radiology or the American osteopathic board of radiology.

22. "Radiologist assistant" means a person who holds a certificate pursuant to section 32-2819 and who performs independent advanced procedures in medical imaging and interventional radiology under the guidance, directions, supervision and discretion of a licensed practitioner of medicine or osteopathic medicine specializing in radiology as set forth in section 32-2819 and the rules adopted pursuant to that section.

23. "Unethical professional conduct" means the following acts, whether occurring in this state or elsewhere:

(a) Intentionally betraying a professional confidence or intentional violation of a privileged communication except as required by law. This subdivision does not prevent the department from exchanging information with the radiologic licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries.

(b) Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401 or hypnotic drugs, derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects or the use of alcohol to the extent that it affects the ability of the certificate or permit holder to practice his profession.

(c) Using drugs for other than accepted therapeutic purposes.

(d) Committing gross malpractice.

(e) Procuring or attempting to procure a certificate or license by fraud or misrepresentation.

(f) Having professional connection with or lending one's name to an illegal practitioner of radiologic technology or any other health profession.

(g) Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

(h) Refusing to divulge to the department, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity. This subdivision does not apply to communication between a technologist or permit holder and a patient with reference to a disease, injury, ailment or infirmity, or as to any knowledge obtained by personal examination of the patient.

(i) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly.

(j) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of radiologic technology.

(k) Having a certificate or license refused, revoked or suspended by any other state, territory, district or country for reasons that relate to the person's ability to safely and skillfully practice radiologic technology or to any act of unprofessional conduct.

(l) Engaging in any conduct or practice that does or would constitute a danger to the health of the patient or the public.

(m) Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

(n) Employing uncertified persons to perform or aiding and abetting uncertified persons in the performance of work that can be done legally only by certified persons.

(o) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate this chapter or a rule adopted by the department.

24. "Unlimited practical technologist in radiology" means a person holding an unlimited practical technologist in radiology certificate that is granted and issued by the department.

25. "Unlimited practical technologist in radiology certificate" means a certificate that was issued to a person in 1977 or 1978, other than a licensed practitioner, who applies ionizing radiation to the human body for diagnostic purposes while under the specific direction of a licensed practitioner.

32-2803. Rules

The director may adopt rules as may be needed to carry out the purposes of this chapter. The rules shall include:

1. Minimum standards of training and experience for persons to be certified pursuant to this chapter and procedures for examining applicants for certification.

2. Provisions identifying the types of applications of ionizing radiation for a practical technologist in podiatry, practical technologist in radiology, practical technologist in bone densitometry, radiologic technologist, radiation therapy technologist, mammographic technologist, nuclear medicine technologist, computed tomography technologist and radiologist assistant and any new radiologic modality technologist and those minimum standards of education and training to be met by each type of applicant.

32-2804. School approval; standards; considerations

A. The department may approve a school of radiologic technology as maintaining a satisfactory standard if its course of study:

1. Is for a period of at least twenty-four months of full-time study or its equivalent and is accredited by the committee on allied health accreditation or meets or exceeds the standards of this chapter.

2. Includes at least four hundred hours of classroom work, including radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy and physiology, radiographic positioning, radiation therapy and professional ethics.

3. Includes at least one thousand eight hundred hours devoted to clinical experience.

4. Includes demonstrations, discussions, seminars and supervised practice.

5. Includes at least eighty hours of regularly scheduled supervised film critiques.

B. An approved school of radiologic technology may be operated by a medical or educational institution or other public or private agency or institution and, for the purpose of providing the requisite clinical experience, shall be affiliated with one or more hospitals that the department determines are likely to provide this experience.

C. In approving a school of radiologic technology, the department shall consider the standards adopted by appropriate professional organizations, including the joint review committee on education in radiologic technology, and may accept the certification of a school of radiologic technology or the accreditation of a hospital to provide requisite clinical experience if the department finds that certification or accreditation was granted on the basis of standards that will afford the same protection to the public as the standards provided by this chapter.

32-2811. Ionizing radiation; prohibitions; limitations; exceptions

A. Except as provided in subsection D of this section, a person may not use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.

B. A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner, except that a person holding a certificate may use ionizing radiation on human beings for diagnostic purposes only while operating in each particular case at the direction of a licensed practitioner who is licensed in any other state, territory or district of the United States. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body specified in the law under which the licensed practitioner is licensed. The provisions of the technologist's certificate govern the extent of application of ionizing radiation.

C. The provisions of this chapter relating to technologists do not limit, enlarge or affect in any

respect the practice of their respective professions by duly licensed practitioners.

D. The requirement of a certificate does not apply to:

1. A hospital resident specializing in radiology who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathic medicine, podiatry, dentistry, naturopathic medicine, chiropractic or radiologic technology and who applies ionizing radiation to a human being while under the specific direction of a licensed practitioner.

2. A person engaged in performing the duties of a technologist in that person's employment by an agency, bureau or division of the government of the United States.

3. Dental hygienists licensed in this state and dental assistants holding a valid certificate in dental radiology from a course approved by the state board of dental examiners.

4. Persons providing assistance during an ionizing radiation procedure, apart from such procedures conducted in a health care institution, under the direction of a person licensed to use an ionizing radiation machine.

5. A person who is employed by or acting on behalf of the state department of corrections or a county jail and who uses a low-dose ionizing radiation body scanning device to detect contraband, as defined in section 13-2501, in or on an inmate.

6. A podiatric medical assistant who holds a valid certificate in podiatric radiology from a course approved by the state board of podiatry examiners.

E. Subsection B of this section does not apply to ionizing radiation ordered by a licensed practitioner for other than diagnostic or therapeutic purposes pursuant to section 13-2505, subsection E.

32-2812. <u>Applications for certificate; qualifications; fees; examination; denial</u>

A. An applicant for a certificate shall submit an application for certification or an application for examination for certification, accompanied by a nonrefundable fee established by the director. An applicant who has practiced radiography without certification shall pay a prorated fee retroactively to the earliest date of uncertified practice. The fee for a replacement certificate is $10. The application for examination fee is $70 and shall not be prorated. An application shall contain information that the applicant:

1. Is at least eighteen years of age.

2. Meets one of the following requirements:

(a) In the case of an application for radiologic technologist, radiation therapy technologist or nuclear medicine technologist certification, has successfully completed a course of study at a school of radiologic technology that is approved by the department or an out-of-state school of radiologic technology that is approved by the joint review committee on education in radiologic technology, the American registry of radiologic technologists or the nuclear medicine technology certification board.

(b) In the case of an application for practical technologist in podiatry certification, practical

technologist in bone densitometry certification and practical technologist in radiology certification, satisfactorily meets the basic requisites determined by the department pursuant to section 32-2803.

(c) In the case of an application for radiologist assistant certification, has obtained a baccalaureate degree or postbaccalaureate certificate from an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship. An applicant for certification before April 1, 2009 is not required to have a baccalaureate degree or postbaccalaureate certificate, but must have completed an advanced academic program that encompasses a nationally recognized radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship.

B. If the application is in proper form and it appears that the applicant meets the eligibility requirements, the applicant shall be notified of the time and place of the next examination.

C. The department may accept, in lieu of its own examination, a certificate issued on the basis of an examination by a certificate-granting body recognized by the department or a certificate, registration or license issued by another state if that state's standards for certification, registration or licensure are satisfactory to the department.

D. The department may deny a certificate to an applicant who has committed an act or engaged in conduct in any jurisdiction that resulted in a disciplinary action against the applicant or that would constitute grounds for disciplinary action under this chapter.

32-2813. Examination; contents; subsequent examinations

A. Examinations for certification shall include the subjects of radiation protection, x-ray physics, radiographic techniques, processing techniques, nursing procedures, anatomy terminology, radiological mathematics, professional ethics and such other subjects as the department may deem appropriate.

B. The department shall prepare lists of examination questions or problems and administer the examinations.

C. Examinations shall include written questions but may also include practical and oral portions. Following each examination, the papers and the practical and oral examinations shall be graded and the standing of each applicant shall be recorded. The department shall either pass or reject each applicant.

D. An applicant who fails to pass an examination may reapply for examination in the manner prescribed by section 32-2812. The department shall require a candidate who fails the examination three times to successfully complete additional training prescribed by the department before accepting the candidate for reexamination.

32-2814. Initial certificates; special permits; temporary certificates

A. The department shall issue an initial certificate that is valid for two years to each candidate who has paid the prescribed fee and who either has successfully passed the examination or has been accepted pursuant to section 32-2812.

B. The department, on application, may issue a special permit to exempt a person from this chapter if the department finds to its satisfaction that there is substantial evidence that the people in the locality of the state in which such an exemption is sought would be denied adequate medical care because of the unavailability of certified licensed practitioners or persons holding certificates pursuant to this chapter. The department shall issue a special permit for a limited period of time, not to exceed one year, to be prescribed by the department in accordance with the purposes of this chapter. The department may renew a special permit if the permittee's circumstances have not changed.

C. The department may issue a temporary certificate to any person whose certification or recertification is pending and in whose case the issuance of a temporary certificate may be justified by reason of special circumstances.

D. A temporary certificate shall be issued only if the department finds that its issuance will not violate the purposes of this chapter or tend to endanger the public health and safety. A temporary certificate expires thirty days after the date of the next examination if the applicant is required to take the examination or, if the applicant does not take the examination, on the date of the examination. In all other cases, a temporary certificate expires when the determination is made either to issue or to deny the issuance of a certificate. A temporary certificate shall not be valid for more than one year and may not be renewed.

E. A person shall submit an application for certification in a form prescribed by the department.

32-2815. Rules; bone densitometry certification; nuclear medicine certification; continuing education

A. The department shall adopt rules regarding the certification of practical technologists in bone densitometry to allow the certificate holder to apply ionizing radiation to a person's extremities through the use of a bone densitometry machine. The rules shall prescribe:

1. The minimum education and training qualifications for certification. The qualifications prescribed by the department shall allow a person who does not meet the education and training requirements of a radiologic technologist or a practical technologist in radiology to obtain a certificate as a practical technologist in bone densitometry.

2. The application and renewal fees.

B. Subsection A of this section does not prohibit a radiologic technologist or a practical technologist in radiology from operating a bone densitometry machine.

C. A person who wishes to practice as a nuclear medicine technologist must apply to the department for certification as prescribed by rule. The department shall adopt rules to establish minimum educational and training requirements for nuclear medicine technologists.

D. The department shall adopt rules to prescribe the following minimum continuing education requirements for the renewal of the following certificates:

1. Practical technologist in podiatry, two hours every two years.

2. Practical technologist in radiology, six hours every two years.

3. Practical technologist in bone densitometry, two hours every two years.

4. Unlimited practical technologist in radiology, twenty-four hours every two years.

5. Nuclear medicine technologist, twenty-four hours every two years.

6. Radiologist assistant, fifty hours every two years.

7. Radiologic technologist, twenty-four hours every two years.

8. Radiation therapy technologist, twenty-four hours every two years.

E. The department may require an applicant for renewal to document compliance with the appropriate continuing education requirements of subsection D of this section.

32-2816. Certificates; fee; terms; registration; renewal; cancellation; waiver

A. Except as provided in section 32-4301, a certificate issued under this section is valid for two years.

B. The department may renew a certificate for two years on payment of a renewal fee established by the director and submission of a renewal application containing information the department requires to show that the applicant for renewal is a technologist in good standing. The applicant for renewal shall also present evidence satisfactory to the department of having completed the required continuing education in radiologic technology within the preceding two years. If a radiologic technologist is certified by the American registry of radiologic technologists or nuclear medicine technology certification board, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry.

C. A certificate holder who fails to renew the certificate on or before the certificate's expiration as prescribed in subsection B of this section shall pay a penalty fee of fifty dollars for late renewal.

D. A certificate holder who does not renew a certificate within thirty days after the certificate expires and who continues the active practice of radiologic technology without adequate cause satisfactory to the department is subject to censure, reprimand or denial of right to renew the certificate pursuant to section 32-2821.

E. On the request of a certificate holder in good standing, the department shall cancel a certificate.

F. The department shall waive the renewal fee if a certificate holder submits an affidavit to the department stating that the certificate holder is retired from the practice of radiologic technology or wishes to be placed on inactive status. A retired or inactive technologist who practices is subject to the same penalties imposed pursuant to this chapter on a person who practices radiologic technology without a certificate.

G. The department may reinstate a technologist on retired or inactive status on payment of the renewal fee pursuant to subsection B of this section.

32-2817. Use of title; display of certificate or permit

A. A person holding a certificate may use the title "certified radiologic technologist", "certified nuclear medicine technologist", "certified radiation therapy technologist", "certified computed tomography technologist", "certified mammographic technologist", "certified radiologist assistant", "certified practical technologist in podiatry", "certified practical technologist in bone densitometry" or "certified practical technologist in radiology", as applicable. No other person shall be entitled to use such titles or title or letters after such person's name that indicates or implies that such person is a certified technologist or to represent the person in any way, whether orally or in writing, expressly or by implication, as being so certified.

B. Every technologist or special permit holder shall display a certificate or permit at the technologist's or permit holder's place of employment.

32-2818. Lapsed certification; inactive status; reinstatement

A person who was an unlimited practical technologist in radiology under this chapter from and after December 31, 1992 and whose certificate was not suspended or revoked but who failed to renew the certificate, on application to the department, may be placed on inactive status or reinstated pursuant to section 32-2816.

32-2819. Radiologist assistants; certification; rules; scope of practice

A. A person who wishes to practice as a radiologist assistant must apply to the department for a certificate on a form and in the manner prescribed by the department pursuant to the requirements of section 32-2812.

B. The department shall adopt rules to implement this section. The rules shall include the following:

1. Continuing education requirements.

2. Any other requirements the department considers appropriate to implement this section.

C. Pursuant to rules adopted by the department, a radiologist assistant may do the following under the direct supervision of a radiologist:

1. Perform fluoroscopic procedures.

2. Assess and evaluate the physiologic and psychological responsiveness of patients undergoing radiologic procedures.

3. Evaluate image quality, make initial image observations and communicate observations to the supervising radiologist.

4. Administer contrast media or other medications prescribed by the supervising radiologist.

5. Perform any other procedures consistent with rules adopted by the department.

D. In adopting rules pursuant to subsection C of this section, the department shall consider guidelines established by the American society of radiologic technologists and the American registry of radiologic technologists.

E. A radiologist assistant shall not interpret images, make diagnoses or prescribe medications or therapies.

F. A radiologist who supervises a radiologist assistant may authorize the assistant to perform only those radiologic procedures described in this section.

G. A person shall not do any of the following without a certificate issued pursuant to this section:

1. Perform the radiologic procedures described in subsection C of this section.

2. Claim to be a radiologist assistant, including using any sign, advertisement, card, letterhead, circular or other writing, document or design to induce others to believe the person is authorized to practice as a radiologist assistant.

H. Subsection G of this section does not apply to either of the following:

1. A person engaging in the scope of practice for which the person holds a valid license or certificate.

2. A person performing a task as part of an advanced academic program.

32-2821. Revocation or suspension of certificate or permit; civil penalties; enforcement; appeals; hearings

A. The director may revoke or suspend a certificate or permit issued under this chapter if the holder of the certificate or permit:

1. Is guilty of any fraud or deceit in activities as a technologist or radiologist assistant or has been guilty of any fraud or deceit in procuring or maintaining a certificate.

2. Has been convicted in a court of competent jurisdiction of a crime involving moral turpitude. If the conviction has been reversed and the holder of the certificate or permit has been discharged or acquitted or if the holder of the certificate or permit has been pardoned or the holder's civil rights have been restored, the certificate may be restored.

3. Is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect, is insane or uses hallucinogens.

4. Has knowingly aided or abetted a person, not otherwise authorized, who is not a certified technologist or radiologist assistant or has not been issued a special permit in engaging in the activities of a technologist or radiologist assistant.

5. Has undertaken or engaged in any practice beyond the scope of the authorized activities of a certified technologist, radiologist assistant or permit holder pursuant to this chapter.

6. Has impersonated a duly certified technologist, radiologist assistant or permit holder or former duly certified technologist, radiologist assistant or permit holder or is engaging in the activities of a technologist, radiologist assistant or permit holder under an assumed name.

7. Has been guilty of unethical professional conduct.

8. Has continued to practice without obtaining a certificate renewal or a special permit renewal.

9. Has applied ionizing radiation to a human being when not operating in each particular case under the direction of a duly licensed practitioner or to any person or part of the human body other than specified in the law under which the practitioner is licensed.

10. Has acted or is acting as an owner, co-owner or employer in any enterprise engaged in the application of ionizing radiation to human beings for the purpose of diagnostic interpretation or the treatment of disease, without being under the direction of a licensed practitioner.

11. Has used or is using the prefix "Dr.", the word "doctor" or any prefix or suffix to indicate or imply that the person is a duly licensed practitioner if this is not true.

12. Is or has been guilty of incompetence or negligence in activities as a technologist.

13. Is or has been afflicted with any medical problem, disability or addiction that the department determines impairs the certificate or permit holder's professional competence.

14. Has interpreted a diagnostic image for a physician, a patient, the patient's family or the public.

15. Has violated any provision of this chapter or rule adopted pursuant to this chapter.

B. A person may appeal the revocation or suspension under subsection A of this section by requesting a hearing pursuant to title 41, chapter 6, article 10. If the revocation or suspension is appealed, the director may not take further action to enforce the revocation or suspension until after the hearing.

C. If the certificate of any person has been revoked or suspended, the department, after the expiration of two years, may consider an application for restoration of the certificate.

D. The director may assess a civil penalty against a person in an amount not to exceed two hundred fifty dollars for each violation of this chapter or a rule adopted pursuant to this chapter. Each day a violation occurs constitutes a separate violation.

E. The director shall issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under this subsection, the department shall consider all of the following:

1. Repeated violations of statutes and rules.

2. Patterns of noncompliance.

3. Types of violations.

4. The severity of violations.

5. The potential for and occurrences of actual harm.

6. Threats to health and safety.

7. The number of persons affected by the violations.

8. The number of violations.

9. The length of time the violations have been occurring.

F. A person may appeal the civil penalty assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. If an assessment is appealed, the director may not take further action to enforce and collect the assessment until after the hearing.

G. Actions to enforce the collection of civil penalties assessed pursuant to this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

H. The department shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

I. The department shall conduct any hearing to revoke or suspend a certificate or permit or impose a civil penalty under this section pursuant to title 41, chapter 6, article 10.

J. The department may issue a nondisciplinary order requiring the certificate holder or permit holder to complete a prescribed number of hours of continuing education in an area or areas prescribed by the department to provide the certificate holder or permit holder with the necessary understanding of current developments, skills, procedures or treatment. The department may also file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a certificate or permit holder.

32-2824. Inspections

A. The department or its duly authorized representatives may enter during scheduled work hours on private or public property for the purpose of:

1. Ensuring that only certified individuals or individuals who are exempt from certification are operating ionizing radiation machines.

2. Determining whether a certified individual is practicing beyond the scope of the person's certificate.

3. Determining whether a certified individual has violated the provisions of this chapter.

4. Auditing ionizing radiation logbooks.

5. Determining compliance with this chapter and the rules adopted pursuant to this chapter.

B. The department may enter areas under the jurisdiction of the federal government only with its permission.

32-2841. Mammographic technologists; computed tomography technologists; certification; renewal

A. A person who wishes to perform diagnostic mammography or screening mammography as defined in section 30-651 shall obtain a mammographic technologist certificate from the department. A person who wishes to perform computed tomography shall obtain a computed tomography technologist certificate from the department. The department shall issue a certificate to an applicant who:

1. Pays a twenty dollar application fee.

2. Holds a current radiologic technology certificate issued by the department.

3. For a mammographic certification, completes the training and education requirements of subsection B of this section and passes an examination as prescribed in subsection D of this section.

4. For a computed tomography technologist certification, provides documentation of two years of experience in computed tomography and completion of twelve hours of computed tomography specific education or passes an examination as prescribed in subsection D of this section.

B. To satisfy the education requirements of subsection A of this section, an applicant shall meet the initial training and education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12.

C. The department shall issue a student mammography permit, preceptorship or temporary certificate to a person who is in training and meets the requirement of subsection A, paragraph 2 of this section if the applicant also provides the department with verification of employment and the name of the radiologist who agrees to be responsible for the applicant's supervision and training. A student mammography permit, preceptorship or temporary certificate is valid for one year from the date it is issued and may not be renewed. If the holder completes all of the requirements of subsection A of this section within the permitted period, the department shall issue a mammographic or computed tomography technologist certificate. The mammographic or computed tomography technologist certificate shall be renewed as prescribed under subsection E of this section.

D. To satisfy the examination requirements of this section an applicant shall pass an examination in mammography or computed tomography administered by the department or, in lieu of its own examination, the department may accept a certificate issued on the basis of an examination by a certificate-granting body recognized by the department.

E. Except as provided in section 32-4301, a certificate that is issued under this section is valid for two years. The department shall notify a certificate holder thirty days before the expiration date of the certificate. An applicant for renewal of a mammographic technologist certificate shall meet the continuing education requirements of the mammography quality standards act regulations for quality standards of mammographic technologists, 21 Code of Federal Regulations section 900.12. If a radiologic technologist is certified by the American registry of radiologic technologists, that person must satisfy the continuing education requirements of this subsection by providing the department with evidence of the technologist's good standing and current certification with that registry. The applicant shall also pay a twenty dollar renewal fee to the

department.

F. A person or facility that employs a person certified under this section shall report any suspected violations of section 32-2821 to the department. The department shall investigate the complaint. If in the course of its investigation the department determines that a person regulated by another regulatory agency of this state may have violated that agency's laws, the department shall report the violation to the other agency for disciplinary action.

32-2842. Mammographic images; physicians; requirements

A physician licensed under chapter 13 or 17 of this title who reads or interprets mammographic images shall meet the following requirements:

1. Have completed forty hours of medical education credits in mammography.

2. Be certified by either the American board of radiology in diagnostic radiology or the American osteopathic board of radiology in diagnostic radiology, as applicable, or meet the requirements of the mammography quality standards act regulations for quality standards of interpreting physicians, 21 Code of Federal Regulations section 900.12.

32-2843. Facilities; requirements

A. A facility that wishes to conduct patient self-referral mammographic screening examinations after January 1, 1994 shall submit the following to the department:

1. The physician-approved guide for accepting self-referrals by patients.

2. A copy of the facility's quality assurance program.

3. The medical physicist's evaluation report of the facility.

B. A facility that does not have a darkroom on-site or that does not develop the films within one hour of exposure shall submit the following to the department:

1. A description of how the facility plans to ensure that the equipment is operating properly at the start of each day.

2. Information regarding the darkroom that develops the film that demonstrates to the department's satisfaction that transportation conditions will not adversely affect a person's ability to interpret the films.

C. The director shall prescribe requirements for the documents required to be submitted to the department under subsections A and B of this section.

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.

D-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 4

Amend: R9-4-602

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 4

Amend: R9-4-602

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend one (1) rule in Title 9, Chapter 4, Article 6 regarding Opioid Poisoning-Related Reporting. Specifically, the Department indicates, on June 21, 2024, Governor Hobbs signed SB1211 (Laws 2024, Chapter 232) with an emergency measure. This emergency measure permits a pharmacist to dispense naloxone hydrochloride or any other opioid antagonist approved by the U.S. Food and Drug Administration without a signed prescription and repeals reporting requirements. The Department indicates this rulemaking intends to align the rules with statute by removing the same reporting requirement that was repealed in statute.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department indicates the proposed amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. Furthermore, the Department states this rulemaking aligns the rules with the statutory changes (Laws 2024, Chapter 232) by removing the same reporting requirement that was repealed in

statute. As such, Council staff believes the Department's rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(1) and (6).

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on November 15, 2024 and the Notice of Final Expedited Rulemaking now before the Council for consideration.

6. 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 there is no corresponding federal law.

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

The Department indicates the rules do not require the issuance of a license, permit, or agency authorization.

8. 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 for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department seeks to amend one (1) rule in Title 9, Chapter 4, Article 6 regarding Opioid Poisoning-Related Reporting. Specifically, SB1211 (Laws 2024, Chapter 232) permits a pharmacist to dispense naloxone hydrochloride or any other opioid antagonist approved by the U.S. Food and Drug Administration without a signed prescription and repeals reporting requirements. The Department indicates this rulemaking intends to align the rules with statute by removing the same reporting requirement that was repealed in statute.

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

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

December 18, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 4, Article 6, Noncommunicable Diseases

Dear Ms. Klein:

The attached final expedited rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for your use in reviewing the rulemaking package:

1. The close of record date: November 29, 2024

2. An explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):

   The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. This rulemaking aligns the rules with the statutory changes (Laws 2024, Chapter 232) by removing the same reporting requirement that was repealed in statute.

3. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council:
   This rulemaking for 9 A.A.C. 4, Article 6 is not related to a five-year review report.

4. 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 or justification for the rule:
   The Department certifies that the preamble accurately discloses that a study was not conducted or relied on in the agency's evaluation or justification of the rules.

5. A list of all documents enclosed:
   - Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of each rule;
   - Copy of the general and specific statutes authorizing the rules;
   - Copy of current rules;

- Governor's Office approval via e mail from the Policy Advisor (initial and of the Notice of Final Rulemaking)

The Department's point of contact for questions about the rulemaking documents is Angie Trevino at angelica.trevino@azdhs.gov.

Sincerely

Stacie Gravito
Director's Designee

SG:at

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES - NONCOMMUNICABLE DISEASES

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

December 4, 2024

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

R9-4-602 Amend

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. § 36-133

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately the date the notice is filed under A.R.S. § 41-1027(H). The effective date is (to be filled in by *Register* editor).

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 2903, Issue Date: September 27, 2024, Issue Number: 39, File number: R24-181

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 3431, Issue Date: November 15, 2024, Issue Number: 36, File number: R24-234

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

Name: Celia Nabor

Title: Assistant Director

Division: Public Health Prevention Services

Address: 150 N. 18th Ave., Suite 510, Phoenix, AZ 85007

Telephone: (602) 448-3514

Email: Celia.Nabor@azdhs.gov

or

Name:	Stacie Gravito
Title:	Office Chief, Administrative Counsel and Rules
Division:	Director's Office
Address:	150 N. 18th Ave., Suite 200, Phoenix, AZ 85007
Telephone:	(602) 542-1020
Fax:	(602) 364-1150
Email:	Stacie.Gravito@azdhs.gov
Website:	azdhs.gov/policy-intergovernmental-affairs/administrative-counsel-rules/rules/index.php

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

Arizona Revised Statutes § 36-133 requires the Arizona Department of Health Services (Department) to develop a chronic disease surveillance system for the collection, management, and analysis of information on the incidence of chronic diseases in Arizona. The Department has implemented this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 4. The Department believes that opioid use disorder, which can lead to opioid overdose and death, has become a chronic disease in Arizona. The Department adopted rules for Opioid Poisoning-Related Reporting under 9 A.A.C. 4, Article 6. On June 21, 2024, Governor Hobbs signed SB1211 (Laws 2024, Chapter 232) with an emergency measure. This emergency measure permits a pharmacist to dispense naloxone hydrochloride or any other opioid antagonist approved by the U.S. Food and Drug Administration without a signed prescription and repeals reporting requirements. With this rulemaking, the Department intends to align the rules with statute by removing the same reporting requirement that was repealed in statute.

8. A reference to any study relevant to the rule that the agency reviewed and either to relied on or did 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 or rely on any study for this rulemaking.

9. A showing a 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

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

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

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

There are no changes between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received regarding this rulemaking.

13. 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:

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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 rules do 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 regarding the rule's impact of the competitiveness of business in this state as compared to competitiveness of business in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

No business competitiveness analysis was submitted.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include

a citation where the material is located:

Not applicable

15. 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) state where the text was changed between the emergency and the final expedited rulemaking package:

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

16. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES - NONCOMMUNICABLE DISEASES

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

Section

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

R9-4-602. Opioid Poisoning-Related Reporting Requirements

A. No change

1. No change
    a. No change
    b. No change
    c. No change
        i. No change
        ii. No change
        iii. No change
    d. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
4. No change
5. No change
    a. No change
    b. No change
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    f. No change
6. No change
    a. No change
    b. No change
        i. No change
        ii. No change

7. No change

8. No change

    a. No change

    b. No change

        i. No change

        ii. No change

9. No change

    a. No change

    b. No change

        i. No change

        ii. No change

        iii. No change

10. No change

B. No change

1. No change

2. No change

C. No change

1. No change

2. No change

3. No change

    a. No change

    b. No change

    c. No change

    d. No change

    e. No change

    f. No change

    g. No change

    h. No change

        i. No change

        ii. No change

4. No change

    a. No change

    b. No change

c. No change

d. No change

i. No change

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iii. No change

iv. No change

v. No change

5. No change

a. No change

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i. No change

ii. No change

iii. No change

5. No change

a. No change

b. No change

6. No change

~~**E.**~~ ~~A pharmacist who dispenses naloxone or another opioid antagonist to an individual according to A.R.S. § 32-1979 shall, either personally or through a representative, submit a report as required in A.R.S. § 32-1979 to document the dispensing.~~

~~**F.**~~**E.** A medical examiner shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after the completion of the death investigation required in A.R.S. § 11-594 on the human remains of a deceased individual with a suspected opioid overdose, that includes:

1. The following information about the medical examiner:

a. Name; and

b. Street address, city, county, and zip code;

2. The following information about the deceased individual with a suspected opioid overdose:

a. The deceased individual's name;
b. The deceased individual's date of birth;
c. The deceased individual's gender;
d. The deceased individual's race and ethnicity;
e. Whether the deceased individual was pregnant and, if so, the expected date of delivery;
f. If applicable, the name of the deceased individual's guardian; and
g. Whether naloxone or another opioid antagonist was administered to the deceased individual before the deceased individual's death and, if known:
    i. The type of first response agency that administered the naloxone or other opioid antagonist to the deceased individual, or
    ii. That the naloxone or other opioid antagonist was administered to the deceased individual by another individual;

3. The following information about the diagnosis of opioid overdose:
    a. The reason for suspecting that the deceased individual had an opioid overdose;
    b. The date of the opioid overdose;
    c. The date of diagnosis; and
    d. If the diagnosis was confirmed by clinical laboratory tests:
        i. The name, address, and telephone number of the clinical laboratory;
        ii. The date a specimen was collected from the deceased individual;
        iii. The type of specimen collected;
        iv. The type of laboratory test performed; and
        v. The laboratory test result and date of the result;
4. If applicable, a copy of the clinical laboratory test results;
5. If known, the following information about the suspected opioid overdose:
    a. Whether the opioid overdose appeared to be intentional or unintentional;
    b. The location where the opioid overdose took place;
    c. Whether the deceased individual was alone at the time of the opioid overdose;
    d. The specific opioid that appeared to be responsible for the opioid

overdose;

e. Whether the deceased individual was prescribed an opioid within the 90 calendar days before the date of the opioid overdose; and

f. Whether the opioid overdose was the first time the deceased individual was known to have had an opioid overdose and, if not, the number of previous opioid overdoses the deceased individual had

6. Whether the deceased individual with the suspected opioid overdose:

a. Died from the suspected opioid overdose and, if so, the date of death; or

b. Died from another cause after experiencing a suspected opioid overdose and, if so, the date of death; and

7. The date of the report.

~~G.~~**F.** Information collected on individuals pursuant to this Article is confidential according to:

1. A.R.S. § 36-133(F); and

2. If applicable, A.R.S. §§ 36-2401 through 36-2403.

ll. The date of last contact; and
mm. If the patient has died:
i. The patient's date and county of death,
ii. The facility in which the patient's death occurred, and
iii. Whether an autopsy was performed on the patient.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1702, effective June 30, 2007 (Supp. 07-2). Amended by final rulemaking at 25 A.A.R. 3429, effective January 1, 2020 (Supp. 19-4).

R9-4-504. Data Quality Assurance and Follow-up

A. The Department may request a hospital, clinic, high-risk perinatal practice, genetic testing facility, or prenatal diagnostic facility to revise a report:
1. That was submitted to the Department by the designee of the hospital, clinic, high-risk perinatal practice, genetic testing facility, or prenatal diagnostic facility under R9-4-502;
2. That was not prepared according to R9-4-502; and
3. By identifying the revisions that are needed in the report.

B. If a person receives a request from the Department for revision of a report under subsection (A), the person shall return a revised report, containing the revisions requested by the Department, to the Department within 15 business days after the date of the Department's request, or by a date agreed to by the person and the Department.

C. The Department may discuss the information submitted to the Department as specified in R9-4-502 or collected as specified in R9-4-503(B)(2) with:
1. Any of the entities specified in R9-4-503(A) to obtain additional information about a patient's diagnosis or treatment;
2. The Arizona Early Intervention Program, according to A.R.S. § 36-133(E); and
3. The parent or guardian of a patient, as allowed by A.R.S. § 36-133(E).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1702, effective June 30, 2007 (Supp. 07-2). Amended by final rulemaking at 25 A.A.R. 3429, effective January 1, 2020 (Supp. 19-4).

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

R9-4-601. Definitions

In this Article, unless otherwise specified:
1. "Administrator" means the individual who is a senior leader in a health care institution or correctional facility.
2. "Ambulance service" has the same meaning as in A.R.S. § 36-2201.
3. "Business day" means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.
4. "Clinical laboratory" has the same meaning as in A.R.S. § 36-451.
5. "Correctional facility" has the same meaning as in A.A.C. R9-6-101.
6. "Dispense" has the same meaning as in A.R.S. § 32-1901.
7. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
8. "First response agency" means:
a. An ambulance service,
b. An emergency medical services provider, or
c. A law enforcement agency.
9. "Health care institution" has the same meaning as in A.R.S. § 36-401.
10. "Health professional" has the same meaning as in A.R.S. § 32-3201.
11. "Law enforcement agency" has the same meaning as in A.A.C. R13-1-101.
12. "Medical examiner" has the same meaning as in A.R.S. § 36-301.
13. "Naloxone" means a specific opioid antagonist that has been used since 1971 to block the effects of an opioid in an individual.
14. "Neonatal abstinence syndrome" means a set of signs of opioid withdrawal occurring in an individual shortly after birth that are indicative of opioid exposure while in the womb.
15. "Opioid" means the same as "opiate" in A.R.S. § 36-2501.
16. "Opioid antagonist" means a prescription medication, as defined in A.R.S. § 32-1901, that:
a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.
17. "Opioid overdose" means respiratory depression, slowing heart rate, or unconsciousness or mental confusion caused by the administration, including self-administration, of an opioid to an individual.
18. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.

Historical Note

New Section made by emergency rulemaking at 23 A.A.R. 2857, effective September 21, 2017, for 180 days (Supp. 17-3). Emergency expired; new Section amended by emergency rulemaking at 24 A.A.R. 630, effective March 20, 2018, for 180 days (Supp. 18-1). New permanent Section made by final rulemaking at 24 A.A.R. 783, with an immediate effective date of April 5, 2018 (Supp. 18-2).

R9-4-602. Opioid Poisoning-Related Reporting Requirements

A. A first response agency shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with a suspected opioid overdose, that includes:
1. The following information about the first response agency:
a. Name;
b. Street address, city, county, and zip code;
c. Whether the first response agency reporting is:
i. An ambulance service,
ii. An emergency medical services provider, or
iii. A law enforcement agency; and
d. If applicable, the certificate number issued by the Department to the ambulance service;
2. The name, title, telephone number, and email address of a point of contact for the first response agency required to report;
3. The following information about the location at which the first response agency encountered the individual:

a. Street address or, if the location at which the first response agency encountered the individual does not have a street address, another indicator of the location at which the encounter occurred;
b. City, if applicable;
c. County;
d. State; and
e. Zip code;

4. If applicable, the date and time the first response agency was dispatched to the location specified according to subsection (A)(3);
5. The following information, as known, about the individual with a suspected opioid overdose or who died of a suspected opioid overdose:
   a. Name,
   b. Date of birth,
   c. Age in years,
   d. Gender,
   e. Race and ethnicity, and
   f. Reason for suspecting that the individual had an opioid overdose;
6. Whether naloxone or another opioid antagonist designated according to A.R.S. § 36-2228 was administered to the individual before the first response agency encountered the individual and, if so:
   a. The number of doses of naloxone or other opioid antagonist administered to the individual; and
   b. As applicable, that the naloxone or other opioid antagonist was administered to the individual by:
      i. Another individual; or
      ii. Another first response agency and, if so the type of first response agency that administered the naloxone or other opioid antagonist to the individual;
7. Whether naloxone or another opioid antagonist designated according to A.R.S. § 36-2228 was administered to the individual by the first response agency and, if so, the number of doses of naloxone or other opioid antagonist administered to the individual;
8. Whether the disposition of the individual was that the individual:
   a. Survived the suspected opioid overdose; or
   b. Was pronounced dead:
      i. At the location specified according to subsection (A)(3), or
      ii. After leaving the location specified according to subsection (A)(3);
9. If the individual was transported by a first response agency:
   a. The type of first response agency that transported the individual; and
   b. Whether the individual was transported to:
      i. A hospital and, if so, the name of the hospital to which the individual was transported;
      ii. Another class of health care institution and, if so, the name of the health care institution to which the individual was transported; or
      iii. A correctional facility and, if so, the name of the correctional facility to which the individual was transported; and
10. The date of the report.

B. The following are not required to submit a report under this Article:

1. An administrator of a health care institution licensed under 9 A.A.C. 10, for an opioid overdose resulting from the administration of the opioid to a patient in the health care institution if the opioid overdose is addressed through the health care institution's quality management program; or
2. A pharmacist for naloxone or another opioid antagonist that is dispensed in connection with a surgical procedure, as defined in A.A.C. R9-10-101, or other invasive procedure performed in a health care institution.

C. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2 or as specified in subsection (B), a health professional or the administrator of a health care institution licensed under 9 A.A.C. 10 shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with a suspected opioid overdose, that includes:

1. The name, street address, city, county, zip code, and telephone number of the health professional or health care institution;
2. If different from the person in subsection (C)(1), the name, title, telephone number, and email address of the individual reporting on behalf of the person in subsection (C)(1);
3. The following information about the individual with a suspected opioid overdose:
   a. The individual's name;
   b. The individual's street address, city, county, state, and zip code;
   c. The individual's date of birth;
   d. The individual's gender;
   e. The individual's race and ethnicity;
   f. Whether the individual is pregnant and, if so, the expected date of delivery;
   g. If applicable, the name of the individual's guardian; and
   h. Whether naloxone or another opioid antagonist designated according to A.R.S. § 36-2228 was administered to the individual before the health professional or health care institution encountered the individual and, if so:
      i. The type of first response agency that administered the naloxone or other opioid antagonist to the individual, or
      ii. That the naloxone or other opioid antagonist was administered to the individual by another individual;
4. The following information about the diagnosis of opioid overdose:
   a. The reason for suspecting that the individual had an opioid overdose;
   b. The date of the suspected opioid overdose;
   c. The date of diagnosis; and
   d. If the diagnosis was confirmed through one or more tests performed by a clinical laboratory, for each test:
      i. The name, address, and telephone number of the clinical laboratory;
      ii. The date a specimen was collected from the individual;
      iii. The type of specimen collected;
      iv. The type of laboratory test performed; and
      v. The laboratory test result and date of the result;

5. The following information about the suspected opioid overdose:
   a. Whether the opioid overdose appeared to be intentional or unintentional;
   b. The location where the opioid overdose took place;
   c. Whether the individual was alone at the time of the opioid overdose;
   d. Whether the individual was transported to the health professional or health care institution by a first response agency and, if so, the type of first response agency that transported the individual;
   e. The specific opioid that appeared to be responsible for the opioid overdose; and
   f. If known, whether:
      i. The individual was prescribed an opioid within the 90 calendar days before the date of the suspected opioid overdose;
      ii. The individual had been referred to receive behavioral health services, as defined in A.R.S. § 36-401; or
      iii. The opioid overdose was the first time the individual had an opioid overdose and, if not, the number of previous opioid overdoses the individual was known to have had;
6. Whether the individual with the suspected opioid overdose:
   a. Survived the suspected opioid overdose and:
      i. Was admitted to the health care institution;
      ii. Was transferred to another health care institution and, if so, the name of the health care institution;
      iii. Was discharged to a law enforcement agency or correctional facility and, if so, the name of the law enforcement agency or correctional facility;
      iv. Was discharged to home; or
      v. Left the health care institution against medical advice; or
   b. Died and, if so, the date of death; and
7. The date of the report.

D. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, a health professional or the administrator of a health care institution licensed under 9 A.A.C. 10 shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with suspected neonatal abstinence syndrome, that includes:

1. The name, street address, city, county, zip code, and telephone number of the health professional or health care institution;
2. If different from the person in subsection (D)(1), the name, title, telephone number, and email address of the individual reporting on behalf of the person in subsection (D)(1);
3. The following information about the individual with suspected neonatal abstinence syndrome:
   a. The individual's name;
   b. The individual's date of birth;
   c. The individual's gender;
   d. The individual's race and ethnicity;
   e. The name of the individual's mother; and
   f. If not the individual's mother, the name of the individual's guardian;
4. The following information about a diagnosis of neonatal abstinence syndrome:
   a. The reason for suspecting that the individual has neonatal abstinence syndrome;
   b. The date of the onset of signs of neonatal abstinence syndrome;
   c. The date of diagnosis;
   d. If the diagnosis was confirmed through one or more tests performed by a clinical laboratory, for each test:
      i. The name, address, and telephone number of the clinical laboratory;
      ii. The date a specimen was collected from the individual;
      iii. The type of specimen collected;
      iv. The type of laboratory test performed; and
      v. The laboratory test result and date of the result; and
   e. Whether any of the following supported a diagnosis of neonatal abstinence syndrome:
      i. A maternal history of opioid use,
      ii. A positive laboratory test for opioid use by the individual's mother, or
      iii. A positive laboratory test for opioids in the individual;
5. If known, the following information about the suspected neonatal abstinence syndrome:
   a. The source of the opioid believed to have caused the neonatal abstinence syndrome; and
   b. If the source of the opioid used by the individual's mother was not through a prescription order, as defined in A.R.S. § 32-1901, the specific opioid used by the individual's mother; and
6. The date of the report.

E. A pharmacist who dispenses naloxone or another opioid antagonist to an individual according to A.R.S. § 32-1979 shall, either personally or through a representative, submit a report as required in A.R.S. § 32-1979 to document the dispensing.

F. A medical examiner shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after the completion of the death investigation required in A.R.S. § 11-594 on the human remains of a deceased individual with a suspected opioid overdose, that includes:

1. The following information about the medical examiner:
   a. Name; and
   b. Street address, city, county, and zip code;
2. The following information about the deceased individual with a suspected opioid overdose:
   a. The deceased individual's name;
   b. The deceased individual's date of birth;
   c. The deceased individual's gender;
   d. The deceased individual's race and ethnicity;
   e. Whether the deceased individual was pregnant and, if so, the expected date of delivery;
   f. If applicable, the name of the deceased individual's guardian; and
   g. Whether naloxone or another opioid antagonist was administered to the deceased individual before the deceased individual's death and, if known:
      i. The type of first response agency that administered the naloxone or other opioid antagonist to the deceased individual, or

ii. That the naloxone or other opioid antagonist was administered to the deceased individual by another individual;

3. The following information about the diagnosis of opioid overdose:
   a. The reason for suspecting that the deceased individual had an opioid overdose;
   b. The date of the opioid overdose;
   c. The date of diagnosis; and
   d. If the diagnosis was confirmed by clinical laboratory tests:
      i. The name, address, and telephone number of the clinical laboratory;
      ii. The date a specimen was collected from the deceased individual;
      iii. The type of specimen collected;
      iv. The type of laboratory test performed; and
      v. The laboratory test result and date of the result;
4. If applicable, a copy of the clinical laboratory test results;
5. If known, the following information about the suspected opioid overdose:
   a. Whether the opioid overdose appeared to be intentional or unintentional;
   b. The location where the opioid overdose took place;
   c. Whether the deceased individual was alone at the time of the opioid overdose;
   d. The specific opioid that appeared to be responsible for the opioid overdose;
   e. Whether the deceased individual was prescribed an opioid within the 90 calendar days before the date of the opioid overdose; and
   f. Whether the opioid overdose was the first time the deceased individual was known to have had an opioid overdose and, if not, the number of previous opioid overdoses the deceased individual had
6. Whether the deceased individual with the suspected opioid overdose:
   a. Died from the suspected opioid overdose and, if so, the date of death; or
   b. Died from another cause after experiencing a suspected opioid overdose and, if so, the date of death; and
7. The date of the report.

G. Information collected on individuals pursuant to this Article is confidential according to:
1. A.R.S. § 36-133(F); and
2. If applicable, A.R.S. §§ 36-2401 through 36-2403.

Historical Note

New Section made by emergency rulemaking at 23 A.A.R. 2857, effective September 21, 2017, for 180 days (Supp. 17-3). Emergency expired; new Section amended by emergency rulemaking at 24 A.A.R. 630, effective March 20, 2018, for 180 days (Supp. 18-1). New permanent Section made by final rulemaking at 24 A.A.R. 783, with an immediate effective date of April 5, 2018 (Supp. 18-2).

36-132. Department of health services; functions; contracts

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

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

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

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

16. Conduct continuing evaluations of state, local and district public health

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

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

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

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or

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

C. The department, 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.

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

36-133. Chronic disease surveillance system; confidentiality; immunity; violation; classification

A. A central statewide chronic disease surveillance system is established in the department. Diseases in the surveillance system shall include cancer, birth defects and other chronic diseases required by the director to be reported to the department.

B. The department, in establishing the surveillance system, shall:

1. Provide a chronic disease information system.

2. Provide a mechanism for patient follow-up.

3. Promote and assist hospital cancer registries.

4. Improve the quality of information gathered relating to the detection, diagnosis and treatment of patients with cancer, birth defects and other diseases included in the surveillance system.

5. Monitor the incidence patterns of diseases included in the surveillance system.

6. Pursuant to rules adopted by the director, establish procedures for reporting diseases included in the surveillance system.

7. Identify population subgroups at high risk for cancer, birth defects and other diseases included in the surveillance system.

8. Identify regions of this state that need intervention programs or epidemiological research, detection and prevention.

9. Establish a data management system to perform various studies, including epidemiological studies, and to provide biostatistic and epidemiologic information to the medical community relating to diseases in the surveillance system.

C. A person who provides a case report to the surveillance system or who uses case information from the system authorized pursuant to this section is not subject to civil liability with respect to providing the case report or accessing information in the system.

D. The department may authorize other persons and organizations to use surveillance data:

1. To study the sources and causes of cancer, birth defects and other chronic diseases.

2. To evaluate the cost, quality, efficacy and appropriateness of diagnostic, therapeutic, rehabilitative and preventive services and programs related to cancer, birth defects and other chronic diseases.

E. The department of health services and the Arizona early intervention program in the department of economic security may use surveillance data to notify the families of children with birth defects regarding services that are available to them and provide these families with information about organizations that provide services to these children and their families.

F. Information collected on individuals by the surveillance system that can identify an individual is confidential and may be used only pursuant to this section. A person who discloses confidential information in violation of this section is guilty of a class 3 misdemeanor.

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 department, environmental department 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 monies 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 that are 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 that are 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 meatpacking 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 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 prepared in a kitchen of a private home for commercial purposes consistent with chapter 8, article 2 of this title.

(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.

(k) Spirituous liquor produced by a producer that is licensed by the department of liquor licenses and control or spirituous liquor imported and sold by wholesalers that is licensed by the department of liquor licenses and control. This exemption includes all commercially prepackaged spirituous liquor and all spirituous liquor poured at a licensed special event, festival or fair in this state.

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 identifying, storing, handling and selling 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 submitting 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. Confidential information may not 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 and chapter 8, article 2 of this title. 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 this 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 if 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" has the same meaning prescribed in section 36-931.

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.

House Engrossed Senate Bill

pharmacists; prescribing; naloxone; reporting

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

CHAPTER 232

SENATE BILL 1211

AN ACT

AMENDING SECTIONS 32-1907, 32-1968, 32-1979 AND 36-2608, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE BOARD OF PHARMACY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-1907, Arizona Revised Statutes, is amended to read:

32-1907. Arizona state board of pharmacy fund

A. Except as provided in section 32-1939, the executive director shall receive and receipt for all fees and other monies provided for in this chapter and shall deposit, pursuant to sections 35-146 and 35-147, ten percent of such monies in the state general fund and ninety percent in the Arizona state board of pharmacy fund. All monies derived from civil penalties collected pursuant to this chapter shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

B. Except as provided in subsection C of this section, monies deposited in the Arizona state board of pharmacy fund ~~shall be~~ ARE subject to section 35-143.01.

C. From monies deposited in the Arizona state board of pharmacy fund pursuant to subsection A of this section, the executive director may transfer up to ~~five hundred thousand dollars~~ $500,000 annually to the controlled substances prescription monitoring program fund established by section 36-2605 for expenses related to the controlled substances prescription monitoring program as required by title 36, chapter 28.

D. From monies deposited in the Arizona state board of pharmacy fund pursuant to subsection A of this section, the executive director may transfer up to ~~one million dollars~~ $1,000,000 annually to EACH the Arizona poison and drug information center AND A POISON AND DRUG INFORMATION CENTER THAT SERVES MARICOPA COUNTY for the purposes specified in section 36-1161 to supplement, and not supplant, any state general fund appropriation for those purposes.

Sec. 2. Section 32-1968, Arizona Revised Statutes, is amended to read:

32-1968. Dispensing prescription-only drug; prescription orders; refills; labels; misbranding; dispensing soft contact lenses; opioid antagonists

A. A prescription-only drug shall be dispensed only under one of the following conditions:

1. By a medical practitioner in conformance with section 32-1921.

2. On a written prescription order bearing the prescribing medical practitioner's manual signature.

3. On an electronically transmitted prescription order containing the prescribing medical practitioner's electronic or digital signature.

4. On a written prescription order generated from electronic media containing the prescribing medical practitioner's electronic or manual signature. A prescription order that contains only an electronic signature must be applied to paper that uses security features that will ensure the prescription order is not subject to any form of copying or alteration.

5. On an oral prescription order that is reduced promptly to writing and filed by the pharmacist.

6. By refilling any written, electronically transmitted or oral prescription order if a refill is authorized by the prescriber either in the original prescription order, by an electronically transmitted refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is documented promptly and filed by the pharmacist.

7. On a prescription order that the prescribing medical practitioner or the prescribing medical practitioner's agent transmits by fax or e-mail.

8. On a prescription order that the patient transmits by fax or by e-mail if the patient presents a written prescription order bearing the prescribing medical practitioner's manual signature when the prescription-only drug is picked up at the pharmacy.

B. A prescription order shall not be refilled if it is either:

1. Ordered by the prescriber not to be refilled.

2. More than one year since it was originally ordered.

C. A prescription order shall contain the date it was issued, the name and address of the person for whom or owner of the animal for which the drug is ordered, refills authorized, if any, the legibly printed name, address and telephone number of the prescribing medical practitioner, the name, strength, dosage form and quantity of the drug ordered and directions for its use.

D. Any drug dispensed in accordance with subsection A of this section is exempt from the requirements of section 32-1967, except section 32-1967, subsection A, paragraphs 1, 10 and 11 and the packaging requirements of section 32-1967, subsection A, paragraphs 7 and 8, if the drug container bears a label containing the name and address of the dispenser, the serial number, the date of dispensing, the name of the prescriber, the name of the patient, or, if an animal, the name of the owner of the animal and the species of the animal, directions for use and cautionary statements, if any, contained in the order. This exemption does not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or the internet or to a drug dispensed in violation of subsection A of this section.

E. The board by rule also may require additional information on the label of prescription medication that the board believes to be necessary for the best interest of the public's health and welfare.

F. A prescription-only drug or a controlled substance that requires a prescription order is deemed to be misbranded if, at any time before dispensing, its label fails to bear the statement "Rx only". A drug to which subsection A of this section does not apply is deemed to be misbranded if, at any time before dispensing, its label bears the caution statement quoted in this subsection.

G. A pharmacist may fill a prescription order for soft contact lenses only as provided in this chapter.

H. A pharmacist may dispense naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration on the receipt of a standing order ~~and according to protocols adopted by the board pursuant to section 32-1979. For the purposes of this subsection, "standing order" means a signed prescription order that authorizes the pharmacist to dispense naloxone hydrochloride or any other opioid antagonist for emergency purposes and that is issued by a medical practitioner licensed in this state or a state or county health officer who is a medical practitioner licensed in this state~~ PURSUANT TO SECTION 36-2266. NALOXONE HYDROCHLORIDE OR ANY OTHER OPIOID ANTAGONIST THAT IS DISPENSED IN ACCORDANCE WITH SUBSECTION A OF THIS SECTION IS EXEMPT FROM THE REQUIREMENTS OF SECTION 32-1967.

Sec. 3. Section 32-1979, Arizona Revised Statutes, is amended to read:

32-1979. Pharmacists; dispensing opioid antagonists; immunity

A. A pharmacist may dispense, pursuant to a standing order issued pursuant to section 36-2266 ~~and according to protocols adopted by the board~~, naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration for ~~use according to the protocols specified by board rule to~~ a person who is at risk of experiencing an opioid-related overdose or to a family member or community member who is in a position to assist that person.

B. A pharmacist who dispenses naloxone hydrochloride or any other opioid antagonist pursuant to subsection A of this section shall ~~:~~

~~1. Document the dispensing consistent with board rules.~~

~~2.~~ instruct the individual to whom the opioid antagonist is dispensed to summon emergency services as soon as practicable after administering the opioid antagonist.

C. This section does not affect the authority of a pharmacist to fill or refill a prescription for naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration.

D. A pharmacist who dispenses an opioid antagonist pursuant to this section is immune from professional liability and criminal prosecution for any decision made, act or omission or injury that results from that act if the pharmacist acts with reasonable care and in good faith, except in cases of wanton or wilful neglect.

Sec. 4. Section 36-2608, Arizona Revised Statutes, is amended to read:

36-2608. Reporting requirements; waiver; exceptions

A. If a medical practitioner dispenses a controlled substance listed in section 36-2513, 36-2514, 36-2515 or 36-2516 or the rules adopted pursuant to chapter 27, article 2 of this title, or if a

prescription for a controlled substance listed in any of those sections ~~or naloxone hydrochloride or any other opioid antagonist~~ that is approved by the United States food and drug administration is dispensed by a pharmacy in this state, a health care facility in this state for outpatient use or a board-permitted nonresident pharmacy for delivery to a person residing in this state, the medical practitioner, health care facility or pharmacy must report the following information as applicable and as prescribed by the board by rule:

1. The name, address, telephone number, prescription number and United States drug enforcement administration controlled substance registration number of the dispenser.

2. The name, address and date of birth of the person for whom the prescription is written.

3. The name, address, telephone number and United States drug enforcement administration controlled substance registration number of the prescribing medical practitioner.

4. The name, strength, quantity, dosage and national drug code number of the schedule II, III, IV or V controlled substance ~~or naloxone hydrochloride or other opioid antagonist~~ dispensed.

5. The date the prescription was dispensed.

6. The number of refills, if any, authorized by the medical practitioner.

B. Except as provided in subsection D of this section, a dispenser must use the latest version of the standard implementation guide for prescription monitoring programs published by the American society for automation in pharmacy to report the required information.

C. The board shall allow the reporter to transmit the required information by electronic data transfer if feasible or, if not feasible, on reporting forms as prescribed by the board. The reporter shall submit the required information once each day.

D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the established format may request a waiver from electronic reporting by submitting a written request to the board. The board shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form as prescribed by the board by rule.

E. The board by rule may prescribe the prescription form to be used in prescribing a schedule II, III, IV or V controlled substance if the board determines that this would facilitate the reporting requirements of this section.

F. The reporting requirements of this section do not apply to the following:

1. A controlled substance that is administered directly to a patient.

2. A controlled substance that is dispensed by a medical practitioner at a health care facility licensed by this state if the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with not more than two seventy-two-hour cycles within any fifteen-day period.

3. A controlled substance sample.

4. The wholesale distribution of a schedule II, III, IV or V controlled substance. For the purposes of this paragraph, "wholesale distribution" has the same meaning prescribed in section 32-1981.

5. A facility that is registered by the United States drug enforcement administration as a narcotic treatment program and that is subject to the recordkeeping provisions of 21 Code of Federal Regulations section 1304.24.

~~G. A pharmacist who dispenses naloxone hydrochloride or another opioid antagonist to an individual pursuant to section 32-1979 shall report the information listed in subsection A, paragraphs 1, 2, 3 and 5 of this section and the name, strength, quantity, dosage and national drug code number as prescribed by the board by rule pursuant to subsection A of this section.~~

~~H. Naloxone hydrochloride or any other opioid antagonist shall not be viewable in the patient utilization report.~~

Sec. 5. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR JUNE 21, 2024.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 21, 2024.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8

Amend: R9-8-101, R9-8-101.01

New Section: R9-8-101.01, R9-8-101.02

Renumber: R9-8-118

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 14, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 8

Amend: R9-8-101, R9-8-101.01

New Section: R9-8-101.01, R9-8-101.02

Renumber: R9-8-118

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend two (2) rules, add two (2) new sections, and renumber one (1) rule in Title 9, Chapter 8, Article 1 regarding sanitation for food establishments. Specifically, the Department indicates, on March 29, 2024, Governor Hobbs signed HB2042 creating new statutes pertaining to cottage foods. With this rulemaking, the Department indicates it plans to amend and create rules in Title 9, Chapter 8, Article 1 to align the rules with the new and amended statutory requirements.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department indicates the proposed amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons.

Furthermore, the Department states this rulemaking intends to align the rules with the statutory changes enacted under Laws 2024, Chapter 18 and incorporates these statutory updates into Title 9, Chapter 8, Article 1, focusing on rules related to cottage foods. As such, the Department indicates this rulemaking is making some clarifying language changes, adopting new statutes, and amending and repealing rules that are outdated due to statutory change. Council staff believes the Department's rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3), (4), and (6)

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on December 13, 2024 and the Notice of Final Expedited Rulemaking now before the Council for consideration.

6. 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 there is no corresponding federal law.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the rules in this Article and the proposed amendments pertaining to cottage foods require an individual, who intends to prepare and sell a cottage food product, to register with the Department. The Department states, pursuant to A.R.S. § 36-931, the cottage food product must be prepared in the home kitchen of the registrant. As such, the Department indicates a general permit is not used. Council staff believes the Department is in compliance with A.R.S. § 41-1037 as the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements pursuant to A.R.S. § 41-1037(A)(3).

8. 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 for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department seeks to amend two (2) rules, add two (2) new sections, and renumber one (1) rule in Title 9, Chapter 8, Article 1 regarding sanitation for food establishments. Specifically, the Department indicates HB2042 created new statutes pertaining to cottage foods. With this rulemaking, the Department indicates it plans to amend and create rules in Title 9, Chapter 8, Article 1 to align the rules with the new and amended statutory requirements.

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

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

December 24, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 8. Food, Recreational, and Institutional Sanitation, Article 1. Food Establishments

Dear Ms. Klein:

The attached final expedited rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for your use in reviewing the rulemaking package:

1. The close of record date: December 20, 2024

2. An explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):

This expedited rulemaking meets the criteria outlined in A.R.S. § 41-1027(A). Specifically:

- The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons.
- This rulemaking intends to align the rules with the statutory changes enacted under Laws 2024, Chapter 18.
- This rulemaking incorporates these statutory updates into 9 A.A.C. 8, Article 1, focusing on rules related to cottage foods.
- This rulemaking is making some clarifying language changes; adopting new statutes, and amending and repealing rules that outdated due to statutory change.

3. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council:
This rulemaking for 9 A.A.C. 8, Article 1 is not related to a five-year review report.

4. 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 or justification for the rule:

The Department certifies that the preamble accurately discloses that a study was not conducted or relied on in the agency's evaluation or justification of the rules.

5. A list of all documents enclosed:
   - Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of each rule;
   - Copy of the general and specific statutes authorizing the rules;
   - Copy of current rules;
   - Governor's Office approval via e mail from the Policy Advisor (initial and of the Notice of Final Rulemaking)

The Department's point of contact for questions about the rulemaking documents is Angie Trevino at angelica.trevino@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:at

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

December 24, 2024

2.

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R9-8-101	Amend
R9-8-101.01	New Section
R9-8-101.01	Amend
R9-8-101.02	New Section
R9-8-118	Renumber

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1) and (7), 36-136(G)

Implementing statutes: A.R.S. § 36-136(I)(4), 36-931, 36-932, and 36-933

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately the date the notice is filed under A.R.S. § 41-1027(H). The effective date is (to be filled in by *Register* editor).

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 933, Issue Date: May 10, 2024, Issue Number: 19, File number: R24-77

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 3774, Issue Date: December 13, 2024, Issue Number: 50, File number: R24-268

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

Name: Myrna Motta

Title: Office Chief, Food Safety and Environmental Services
Bureau of Resiliency and the Environment

Address: Arizona Department of Health Services, 150 N. 18th Ave., Suite 220
Phoenix, AZ 85007
Telephone: (602) 364-0929
Email: myrna.motta@azdhs.gov

or

Name: Stacie Gravito
Title: Office Chief, Administrative Counsel and Rules
Division: Director's Office
Address: Arizona Department of Health Services, 150 N. 18th Ave., Suite 200,
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
Email: Stacie.Gravito@azdhs.gov

Website: azdhs.gov/policy-intergovernmental-affairs/administrative-counsel-rules/rules/index.php

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

Arizona Revised Statutes §§ 36-136 (A)(4) and (I)(4) require the Arizona Department of Health Services (Department) to make rules to ensure that food and drink are fit for human consumption. The Department has adopted rules to implement the statute requirements in 9 A.A.C. 8, Article 1. Exemptions to the requirements in 9 A.A.C. 8, Article 1, have been adopted in A.A.C. R9-8-118. On March 29, 2024, Governor Hobbs signed HB2042 creating new statutes pertaining to cottage foods. With this rulemaking, the Department plans to amend and create rules in 9 A.A.C. 8, Article 1, to align the rules with the new and amended statutory requirements.

8. 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 or rely on any study for this rulemaking.

9. A showing a 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

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

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

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

There are no changes between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received regarding this rulemaking.

13. 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:

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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. The rules in this Article and the proposed amendments pertaining to cottage foods require an individual, who intends to prepare and sell a cottage food product, to register with the Department. According to A.R.S. § 36-931, the cottage food product must be prepared in the home kitchen of the registrant. A general permit is not used.

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 business competitiveness analysis was received by the Department of Health Services.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

15. 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) state where the text was changed between the emergency and the final expedited rulemaking package:

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

16. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD ESTABLISHMENTS

Section

ARTICLE 1. FOOD ESTABLISHMENTS

R9-8-101. Purpose and Definitions

A. The Department:

1. ~~incorporates~~ Incorporates by reference the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration, ~~and shall comply with the 2017 Food Code (FC) as specified in this Article. This incorporation~~ which is incorporated by reference, contains no future editions or amendments, is on file with the Department, and ~~The incorporated material is on file with the Department and~~ is available for order at: https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm239035.htm, refer to publication number IFS17;
2. Shall comply with the 2017 Food Code (FC) as specified in this Article; and
3. Designates in all capital letters the terms used in this Article that are defined in FC Part 1-2, Section 1-201.10(B).

B. No change

1. No change
2. No change

C. No change

1. No change
2. No change
3. No change
    a. No change
        i. No change
        ii. No change
    b. No change
    c. No change
    d. No change
    e. No change
        i. No change
        ii. No change

iii. No change

iv. No change

v. No change

vi. No change

f. No change

g. No change

h. No change

D. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change

~~R9-8-118.~~ R9-8-101.01. ~~Exempt~~ Exemptions from Requirements and Inspections

A. No change

B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:

1. No change
2. No change
3. No change
4. Residential group care facilities, as defined in ~~A.A.C. R6-5-7401~~ 21 A.A.C. 7

that have 20 or fewer clients;

5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. FOOD that is:
    a. No change
    b. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
    c. No change
    d. No change
    e. ~~A~~ Prepared as part of a demonstration of FOOD preparation or a cooking class offered by:
        i. A culinary school or educational institution and all FOOD prepared is consumed by attending students;
        ii. A school or business and samples are not offered for human consumption; ~~and~~ or
        iii. A business where an individual provides, prepares, cooks, and consumes their own FOOD;
    f. Offered at a child care facility and limited to:
        i. ~~commercially~~ Commercially pre-packaged FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, ~~and~~ or
        ii. ~~whole~~ Whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
    g. Offered at locations that sell only commercially pre-packaged FOOD that is not time/temperature control for safety food;

13. A cottage FOOD product, as defined in ~~A.R.S. § 36-136(Q), prepared for commercial purposes that:~~ A.R.S. § 36-931, that is in compliance with R9-8-101.02;

~~a. Is not time/temperature control for safety food as defined in A.R.S. § 36-136(I)(4)(g); or~~

~~b. Is not a FOOD that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and~~

~~c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:~~

~~i. Has a certificate of completion from completing a food handler training course from an accredited program;~~

~~ii. Maintains an active certification of completion; and~~

~~iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and~~

~~d. Is PACKAGED at the home with an attached label that includes:~~

~~i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);~~

~~ii. A list of the ingredients in the cottage FOOD;~~

~~iii. The date the cottage FOOD was prepared; and~~

~~iv. The statement: This product was produced in a home kitchen that may process common FOOD allergens and is not subject to public health inspection; and~~

~~v. If applicable, a statement that the cottage FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities.~~

14. No change

15. No change

16. No change

~~**C.** A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage FOOD for commercial purpose.~~

~~**D.** To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:~~

~~1. Complete a food handler training course from an accredited program;~~

2. Register with the Department by submitting:
    a. An application in a Department-provided format that includes:
        i. The food preparer's name, address, telephone number, and e-mail address;
        ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;
        iii. The address, including the county, of the home where the cottage FOOD is prepared;
        iv. Whether the home where the cottage FOOD is prepared is a facility for developmentally disabled individuals; and
        v. A description of each cottage FOOD prepared for commercial purposes;
    b. A copy of the food preparer's certificate of completion for the completed food handler training course;
    c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
    d. An attestation in a Department-provided format that the food preparer:
        i. Has reviewed Department-provided information on FOOD safety and safe FOOD handling practices;
        ii. Based on the Department-provided information, believes that the cottage FOOD prepared for commercial purposes is not time/temperature control for safety food or is not a FOOD that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
        iii. Includes the food preparer's printed name and date.
3. Maintain an active certification of completion for the completed food handler training course;
4. Renew the registration in subsection (D)(2) every three years;
5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
6. Display the food preparer's certificate of registration when operating as a temporary FOOD ESTABLISHMENT and selling cottage FOOD.

~~**E.** Food establishments shall have until January 31, 2022 to comply with the certified food protection manager requirement specified in this Article.~~

R9-8-101.02. Cottage Food

A. An individual wanting to prepare a cottage FOOD product, as defined in A.R.S. § 36-931, for commercial purposes and to be exempt from the requirements in all other Sections of this Article shall:

1. Complete a food handler training course from an accredited program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals;
2. Submit an application for registration to the Department that includes:
   a. The following information in a Department-provided format:
      i. The individual's name, address, telephone number, and e-mail address;
      ii. The street address, city, county, and state of the home where the cottage FOOD is prepared;
      iii. Whether the home where the cottage FOOD is prepared is a facility for developmentally disabled individuals; and
      iv. A description of each cottage FOOD prepared for commercial purposes;
   b. A copy of the individual's active certificate of completion for the food handler training course from the accredited program in subsection (A)(1); and
   c. A signed attestation, in a Department-provided format, that the individual:
      i. Has reviewed Department-provided information on FOOD safety and safe FOOD handling practices;
      ii. Will prepare and sell or offer for sale cottage FOOD to the public only if the cottage FOOD meets the requirements of A.R.S. Title 36, Chapter 8, Article 2, and this Section;
      iii. While preparing cottage FOOD for commercial purposes, will follow the safety guidance from the food handler's training course required according to subsection (A)(1), as well as the Department provided information on FOOD safety and safe

FOOD handling practices, including the requirements for the safe handling, processing, and storage of FOOD that is a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

iv. Will prepare the cottage FOOD in the home kitchen at the address provided in subsection (A)(2)(a)(ii), as defined in A.R.S. § 36-931(3);

v. Will make, package, and attach a legible label according to A.R.S. § 36-932;

vi. Will dispose of FOOD waste and kitchen waste in a safe and sanitary manner;

vii. Will directly supervise and be responsible for the tasks undertaken by another individual who is not registered with the Department and assisting in preparing cottage FOODS for commercial purposes, in accordance with A.R.S. § 36-932(C);

viii. If selling cottage FOOD products online, will advertise the sale in accordance with A.R.S. § 36-932(B);

ix. Will sell, transport, and deliver cottage FOOD products according to A.R.S. § 36-932(E);

x. Except as otherwise permitted by A.R.S. § 36-931(1)(b), will not make cottage FOODS that are or that contain alcoholic beverages, unpasteurized milk products, fish, shellfish products, meat, meat by-products, poultry, or poultry by-products;

xi. Will not sell a cottage FOOD product with the intent for the cottage FOOD product to be used as an ingredient to make other products sold at a retail establishment, as specified in A.R.S. § 36-932(F)(1);

xii. Will not prepare products containing marijuana or marijuana products, as specified in A.R.S. § 36-932(F)(2);

xiii. Will only use an ingredient if the ingredient is from an approved source and allowed by law, as specified in A.R.S. § 36-932(G);

xiv. Will not use the home kitchen, as defined in A.R.S. § 36-931(3), as a commissary for a mobile food unit, as specified in A.R.S. § 36-932(H);

xv. Will not store cottage FOOD products or FOOD preparation equipment outside of the individual's home, in accordance with A.R.S. § 36-932(D)(2);

xvi. Will not prepare cottage FOODS for commercial purposes if the individual's certification according to subsection (A)(3) and registration with the Department, according to subsection (A)(4) have expired;

xvii. Understands and acknowledges that the individual's registration as a cottage FOOD preparer with the Department does not exempt the individual or the FOOD or drink products that the individual prepares and sells or offers for sale from the requirements for brand inspections, animal health inspections, or any FOOD inspections required by state or federal law or the requirements for the sale of milk, milk products, raw milk, and raw milk products under A.R.S. § 3-606 and that the individual may be subject to disciplinary action by the agencies charged with enforcing those requirements should those requirements be violated; and

xviii. Understands that noncompliance with the requirements in A.R.S. §§ 36-931 through 36-933 and this Section may result in suspension or revocation of registration, according to A.R.S. § 36-933(C), or to civil or criminal penalties;

3. Not prepare a cottage FOOD product for sale to a consumer, if the individual does not have a current registration with the Department;

4. Maintain an active certification from a food handler training course from an accredited program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individual;

5. Renew the registration in subsection (A)(3) every three years;

6. Submit any change to the information or documents provided according to subsection (A)(2) to the Department within 30 calendar days after the change; and

7. Display the cottage food preparer's certificate of registration when selling cottage FOOD at a location other than from the home kitchen.

B. An individual is not exempt from all other requirements in this Article if the individual does not maintain both an active food handler's certification, according to subsection (A)(4), and a current registration as a cottage food preparer with the Department, according to subsection (A)(5).

C. The registered cottage food preparer shall:

1. Prepare FOOD in the home kitchen of the registered cottage food preparer;
2. Only use ingredients from an approved source and allowed by law, as specified in A.R.S. § 36-932(G);
3. Package the food at the home with an attached label that meets the requirements in A.R.S. § 36-932, including:
    a. The name and registration number of the cottage food preparer registered with the Department;
    b. A list of all ingredients in the cottage FOOD;
    c. The date the cottage FOOD was prepared;
    d. The statement required by A.R.S. § 36-932(A)(3): This product was produced in a home kitchen that may come in contact with common FOOD allergens and pet allergens and is not subject to public health inspection;
    e. The statement required by A.R.S. § 36-932(A)(5): To obtain additional information about cottage foods or to report a foodborne illness, go to azdhs.gov/Cottagefood; and
    f. If applicable, a statement that the cottage FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities; and
4. Ensure that the packaging:
    a. Is clean and sanitary, and secure; is appropriate for the consistency and temperature of the food; and totally encloses the food; and
    b. Contains a tamper-evident seal, which could be the label.

D. The registered cottage food preparer selling the cottage food:

1. Shall only offer cottage FOODS for sale and delivery in Arizona;
2. For cottage food products that are not Time/Temperature Control for Safety FOODS, may:
    a. Sell and deliver directly to a consumer, or

b. Use a third-party food delivery platform for delivery to a consumer;

3. If using a third-party delivery platform, shall utilize a third-party delivery platform that agrees to comply with A.R.S. § 36-932 (E)(2);

4. For cottage food products that are Time/Temperature Control for Safety FOODS or contain meat or poultry products, shall ensure that the food:

a. Is delivered in person directly to the consumer;

b. Is not delivered by a third-party food delivery platform;

c. Is maintained at the appropriate temperature during delivery and until provided to the consumer;

d. Is transported to no more than one destination and for no longer than two hours in duration, including any time spent delayed in traffic; and

e. Is not sold to the public except at the initial destination; and

5. If selling a cottage food product through a third-party vendor, such as inside a store or kiosk, shall ensure that:

a. The cottage food product is sold in a separate section of the store or on a display case separate from non-homemade food items, and

b. The third-party vendor displays a sign that indicates that the cottage food product is homemade and exempt from state licensing and inspection.

E. If a cottage food product is offered for sale online, the registered cottage food preparer shall provide a prominent notification that includes all of the labeling information required in subsections (C)(3)(a) through (f).

F. The Department shall:

1. Process an application in subsection (A)(2) according to A.R.S. § 41-1073;

2. Issue a certificate of registration if the application is in compliance with the requirements of this Section;

3. Notify the applicant in writing if additional information is required;

4. Consider the application withdrawn if the Department does not receive a response to the notification in subsection (F)(3) within 30 days after the notification; and

5. Deny an application that is not in compliance with this Section.

G. The Department:

1. Shall notify the registered cottage food preparer in writing of:

a. Suspected noncompliance with A.R.S. Title 36, Chapter 8, Article 1, or

this Section; or

b. Receipt of a food safety complaint; and

2. May suspend or revoke the cottage food preparer's registration for:

a. Noncompliance with A.R.S. Title 36, Chapter 8, Article 1, or this Section;

b. Receipt of a verified food safety complaint;

c. Impeding the investigation, according to 9 A.A.C. 6, Article 2 or 3, of a reported foodborne illness; or

d. A violation under A.R.S. § 36-601.

H. A registered cottage food preparer may appeal a suspension or revocation according to A.R.S. Title 41, Chapter 6, Article 10.

ARTICLE 1. FOOD ESTABLISHMENTS

R9-8-101. Purpose and Definitions

A. The Department incorporates by reference the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration and shall comply with the 2017 Food Code (FC) as specified in this Article. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and is available for order at: https://www.fda.gov/Food/Resources-ForYou/Consumers/ucm239035.htm, refer to publication number IFS17.

B. The Department incorporates FC Chapter 1 in whole, unless otherwise specified:
1. Part 1-1 Title, Intent, Scope; and
2. Part 1-2 Definitions in part.

C. In FC Part 1-2, Section 1-201.10(B), the Department:
1. Uses the word "License" in place of the word "Permit."
2. Uses the word "License holder" in place of the word "Permit holder."
3. Modifies the following:
   a. "Additive" means:
      i. "Food additive" means the same as in A.R.S. § 36-901(7), but also includes marijuana and marijuana concentrate, as defined in A.R.S. § 36-2850, when used by a marijuana establishment in compliance with and according to A.R.S. Title 36, Chapter 28.2 and 9 A.A.C. 18; and
      ii. "Color additive" means the same as in A.R.S. § 36-901(2).
   b. "Adulterated" means possessing one or more of the conditions enumerated in A.R.S. § 36-904(A), but does not include the addition of marijuana or marijuana concentrate, as defined in A.R.S. § 36-2850, when used by a marijuana establishment in compliance with and according to A.R.S. Title 36, Chapter 28.2 and 9 A.A.C. 18.
   c. "Approved" means acceptable to the REGULATORY AUTHORITY or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
   d. "Consumer" means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT and does not offer the FOOD for resale.
   e. "Food Establishment" does not include:
      i. An establishment that offers only prePACKAGED FOOD that are not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;
      ii. A produce stand that only offers whole, uncut fresh fruits and vegetables;
      iii. A kitchen in a private home if only FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, is prepared for sale or service at a function such as a religious or charitable (organization's bake sale if allowed by LAW and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is not subject to regulation and inspection by the REGULATORY AUTHORITY;
      iv. An area where FOOD that is prepared as specified in Subparagraph (iii) of this definition is sold or offered for human consumption;
      v. A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal offered, the number of guests served does not exceed 18, and the CONSUMER is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated and inspected by the REGULATORY AUTHORITY; or
      vi. A private home that receives catered or home-delivered FOOD.
   f. "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped compliant with LAW.
   g. "Person in charge" means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation of the FOOD ESTABLISHMENT at the time of inspection.
   h. "Regulatory authority' means the Department or a public health services district, local health department, department of environmental services, or department of environmental quality carrying out delegated functions, powers, and duties on behalf of the Department.

D. In addition to the requirements in FC Part 1-2, Section 1-201.10(B), the Department requires definitions for:
1. "Administrative completeness review time-frame" means the same as in A.R.S. § 41-1072.
2. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
3. "Applicant" means an individual requesting a FOOD ESTABLISHMENT license.
4. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
5. "Department" means the Arizona Department of Health Services.
6. "Developmental disability" means the same as in A.R.S. § 36-551.
7. "FC" means the United States Food and Drug Administration publication, Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration incorporated by reference in subsection (A).
8. "Inspection report" means a document used to record the compliance status of a FOOD ESTABLISHMENT and conveys compliance information to the license holder or PERSON IN CHARGE at the conclusion of an inspection.
9. "License" means the same as "permit" as in the FC.

10. "License holder" means the same as "permit holder" as in the FC.
11. "Marijuana" means the same as in A.R.S. § 36-2850.
12. "Marijuana concentrate" means the same as in A.R.S. § 36-2850.
13. "Marijuana establishment" means the same as in A.R.S. § 36-2850.
14. "Overall time-frame" means the same as in A.R.S. § 41-1072.
15. "Public health nuisance" means an act, condition, or thing, specified in A.R.S. § 36-601, or any practice contrary to the health laws of this state that is harmful to the health of the public.
16. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 17 A.A.R. 2608, effective February 4, 2012 (Supp. 11-4). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3). Section amended by exempt rulemaking at 27 A.A.R. 693, effective May 3, 2021 (Supp. 21-2).

R9-8-102. Management and Personnel

A. The Department incorporates FC Chapter 2 in whole unless otherwise specified:
1. Part 2-1 Supervision;
2. Part 2-2 Employee Health in part;
3. Part 2-3 Personal Cleanliness;
4. Part 2-4 Hygienic Practices; and
5. Part 2-5 Responding to Contamination Events.

B. In addition to the requirements in FC Part 2-2, the Department in:
1. Section 2-201.12(B)(3), adds hepatitis A virus requirements specified in A.A.C. R9-6-343(B)(1) through (3);
2. Section 2-201.13(C)(2),
   a. Deletes "The FOOD EMPLOYEE provides to the PERSON IN CHARGE written medical documentation from a HEALTH PRACTITIONER that states the FOOD EMPLOYEE is free from Typhoid fever.P" and
   b. Adds Typhoid fever requirements in A.A.C. R9-6-388(A)(4)(a) and (b).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 317, effective March 14, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 2768, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 17 A.A.R. 2608, effective February 4, 2012 (Supp. 11-4). Amended by final rulemaking at 24 A.A.R. 1817, with an immediate effective date of June 8, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 25 A.A.R. 1547, with an immediate effective date of June 5, 2019 (Supp. 19-2). Section R9-8-102 renumbered to R9-8-118; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-103. Food

A. The Department incorporates FC Chapter 3 in whole, unless otherwise specified:
1. Part 3-1 Characteristics;
2. Part 3-2 Sources, Specifications, and Original Containers and Records;
3. Part 3-3 Protection From Contamination After Receiving in part;
4. Part 3-4 Destruction of Organisms of Public Health Concern;
5. Part 3-5 Limitation of Growth of Organisms of Public Health Concern;
6. Part 3-6 Food Identity, Presentation, and On-Premises Labeling;
7. Part 3-7 Contaminated Food; and
8. Part 3-8 Special Requirements for Highly Susceptible Populations.

B. In FC Part 3-3, the Department:
1. In paragraph 3-301.11(B), requires employees to use "non-latex SINGLE-USE gloves."
2. In paragraph 3-304.15(E), requires "Latex gloves may not be used in direct contact with FOOD."

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-104. Equipment, Utensils, and Linens

The Department incorporates FC Chapter 4 in whole:
1. Part 4-1 Materials for Construction and Repair;
2. Part 4-2 Design and Construction;
3. Part 4-3 Numbers and Capacities;
4. Part 4-4 Location and Installation;
5. Part 4-5 Maintenance and Operation;
6. Part 4-6 Cleaning of Equipment;
7. Part 4-7 Sanitization of Equipment and Utensils;
8. Part 4-8 Laundering; and
9. Part 4-9 Protection of Clean Items.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

Table 1. Repealed

Historical Note

New Table made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Table 1, Time-Frames (in days) repealed by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-105. Water, Plumbing, and Waste

A. The Department incorporates FC Chapter 5 in whole, unless otherwise specified:
1. Part 5-1 Water in part;
2. Part 5-2 Plumbing System;
3. Part 5-3 Mobile Water Tank and Mobile Food Establishment Water Tank;
4. Part 5-4 Sewage, Other Liquid Waste, and Rainwater; and
5. Part 5-5 Refuse, Recyclables, and Returnable.

B. In FC Part 5-1, the Department in Section 5-101.13 requires "BOTTLED DRINKING WATER used or sold in a FOOD

ESTABLISHMENT shall be obtained from APPROVED sources in accordance with LAW."

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-106. Physical Facilities

A. The Department incorporates FC Chapter 6 in whole:
1. Part 6-1 Materials for Construction and Repair;
2. Part 6-2 Design, Construction, and Installation;
3. Part 6-3 Numbers and Capacities;
4. Part 6-4 Location and Placement; and
5. Part 6-5 Maintenance and Operation.

B. In addition to the requirements in FC Part 6-5, the Department requires:
1. A license holder for a VENDING MACHINE to affix to a VENDING MACHINE a permanent sign that includes:
   a. A unique identifier for the VENDING MACHINE, and
   b. A telephone number for CONSUMERS to contact the license holder.
2. A license holder operating a water vending machine shall comply with A.A.C. R18-4-216 and other applicable LAW.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-107. Poisonous or Toxic Materials

The Department incorporates FC Chapter 7 in whole:
1. Part 7-1 Labeling and Identification;
2. Part 7-2 Operational Supplies and Applications; and
3. Part 7-3 Stock and Retail Sale.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 2768, effective September 9, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-108. Compliance and Enforcement

A. The Department incorporates FC Chapter 8 in whole, unless otherwise specified:
1. Part 8-1 Code Applicability;
2. Part 8-2 Plans Submission and Approval;
3. Part 8-3 Permit to Operate in part;
4. Part 8-4 Inspection and Correction of Violations in part; and
5. Part 8-5 Prevention of Foodborne Disease Transmission by Employees.

B. In FC Part 8-3, the Department does not accept requirement in Section 8-303.30, Denial of Application for Permit, Notice.

C. In addition to the requirements in FC Part 8-3, Section 8-302.14, the Department requires an applicant for a FOOD ESTABLISHMENT application include:
1. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
2. Whether the applicant agrees to allow the REGULATORY AUTHORITY to submit a supplemental request for additional information or documentation in subsection (E);
3. An attestation that the applicant authorizes the REGULATORY AUTHORITY to verify all information provided in the application packet; and
4. An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit an application for each location.

D. In addition to the requirements in FC Part 8-3, Section 8-303.20, the Department requires a licensee for a FOOD ESTABLISHMENT license renewal include:
1. Except for a FOOD ESTABLISHMENT operated by a state prison or behavioral health facility licensed by the Department, a FOOD ESTABLISHMENT'S license number and expiration date;
2. Whether the applicant agrees to allow the REGULATORY AUTHORITY to submit supplemental request for additional information or documentation in subsection (E); and
3. An attestation that the applicant authorizes the REGULATORY AUTHORITY to verify all information provided in the application packet.

E. In addition to FC Part 8-3, the Department adds application and license renewal time-frame requirements:
1. The overall time-frame begins, for:
   a. An application packet, on the date a REGULATORY AUTHORITY receives the applicant's application packet.
   b. A license renewal packet, on the date a REGULATORY AUTHORITY receives the applicant's license renewal packet.
2. An applicant and a REGULATORY AUTHORITY may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
3. Within the administrative completeness review time-frame specified in Table 1.1, a REGULATORY AUTHORITY shall:
   a. Provide a notice of administrative completeness to an applicant; or
   b. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
4. If the REGULATORY AUTHORITY provides a notice of deficiencies to an applicant:
   a. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the REGULATORY AUTHORITY receives the missing information or documents from the applicant;
   b. If the applicant submits the missing information or documents to the REGULATORY AUTHORITY within the time-frame in Table 1.1, the substantive review time-frame resumes on the date the REGULATORY AUTHORITY receives the missing information or documents; and
   c. If the applicant does not submit the missing information or documents to the regulatory authority within

the time-frame in Table 1.1, the regulatory authority shall consider the application withdrawn.

5. If a REGULATORY AUTHORITY issues a license or notice of approval during the administrative completeness review time-frame, the REGULATORY AUTHORITY may choose not to issue a separate written notice of administrative completeness.
6. Within the substantive review time-frame specified in Table 1.1, a REGULATORY AUTHORITY:
   a. Shall approve or deny:
      i. An application, or
      ii. A license renewal;
   b. May make one written comprehensive request for additional information or documentation; and
   c. May make supplemental requests for additional information and documentation if agreed to by the applicant or license holder.
7. If a REGULATORY AUTHORITY provides a written comprehensive request for additional information or documentation or a supplemental request to an applicant or license holder:
   a. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the REGULATORY AUTHORITY receives the information and documents requested; and
   b. An applicant or license holder shall submit the information and documents listed in the written comprehensive request in a format provided by the REGULATORY AUTHORITY within 15 calendar days after the date of the written comprehensive request or supplemental request.
8. The REGULATORY AUTHORITY shall issue to an applicant or license holder, as applicable:
   a. An approval for:
      i. An application, or
      ii. A license renewal; or
   b. A denial, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if an applicant or license holder:
      i. Does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or
      ii. Does not comply with A.R.S. § 36-136 and this Article.

F. In FC Part 8-4, the Department:

1. In Section 8-402.11 requires "The REGULATORY AUTHORITY to comply with A.R.S. § 41-1009 when performing inspections."
2. Does not accept requirements in:
   a. Section 8-402.20, Refusal, Notification of Right to Access, and Final Request for Access;
   b. Section 8-402.30, Refusal, Reporting;
   c. Section 8-402.40, Inspection Order to Gain Access; and
   d. Section 8-403.10, Documenting Information and Observation.
3. In Section 8-403.50 requires "A REGULATORY AUTHORITY treat the inspection report as a public document and shall make it available for disclosure to a PERSON who requests it as provided in LAW."
4. In Section 8-404.12 requires "A REGULATORY AUTHORITY approve or deny resumption of operations within five days after receipt of the license holder's request to resume operations."

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

Table 1.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review	Respond to Deficiency Notice	Substantive Review
Application	A.R.S. § 36-136(I)(4)	90	45	180	45
License Renewal	A.R.S. § 36-136(I)(4)	90	45	180	45

Historical Note

New Table 1.1 made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-109. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). Repealed by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-110. Mobile Food Units

A. In addition to the definitions in A.R.S. § 36-1761 and in this Article, the following definitions apply to this Section, unless otherwise specified:

1. "Commissary" means a facility that:
   a. Is APPROVED by a REGULATORY AUTHORITY as safe and sanitary for FOOD preparation consistent with the FC and other state statutes and laws; and
   b. Provides support and servicing activities to a mobile food unit that may include:
      i. A cooking facility or commercial kitchen used to prepare FOOD for sale and consumption;
      ii. A space for storing FOOD, including refrigeration, and supplies;
      iii. A source for potable water and disposing of wastewater;
      iv. A source for refuse disposal; and
      v. An area for cleaning equipment or a mobile food unit.
2. "Commercially processed" means FOOD prepared or packaged by a FOOD manufacturer or licensed-permanent FOOD ESTABLISHMENT compliant with LAW.
3. "County" means a public health services district, local health department, department of environmental services,

or department of environmental quality authorized to issue a mobile food unit state-license.

4. "Individually packaged" means pre-packaged FOOD that are ready for consumption and are not re-packaged prior to sale to consumers.
5. "Food manufacturer" means a business engaged in making FOOD from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating FOOD, including FOOD crops or ingredients.
6. "Other servicing area" means a facility that may provide one or more services, such as:
   a. Disposing of refuse,
   b. Disposing of wastewater,
   c. Recharging potable water tank,
   d. Disposing of excreta, or
   e. Cleaning mobile food unit.
7. "Permit" means a document issued by a county authorizing a state-licensed mobile food unit, whose state-license was issued by a different county, to operate in the county issuing the permit according to A.R.S. § 36-1761(A)(3).
8. "Pre-packaged foods" means edible products sealed in a box, bag, can, or other container and sold to retailers or consumers in the same packaged box, bag, can, or other container.
9. "State-license" means a document:
   a. Issued by the county where a mobile food unit's commissary is located according to A.R.S. 36-1761(A)(3)(c); and
   b. Authorizes the mobile food unit to dispense FOOD for immediate service and human consumption.
10. "Statewide inspection" means a visual examination of a mobile food unit to ensure that the mobile food unit meets the standards specified A.R.S. § 36-1761 and in this Article.

B. A mobile food vendor shall not operate a mobile food unit:

1. Without a state-license authorizing the mobile food unit to dispense FOOD for immediate service and human consumption;
2. Without a service agreement with an APPROVED commissary according to A.R.S. § 36-1761(A);
3. In another county, other than the county that issued the mobile food unit's state-license, without a permit authorizing the mobile food unit to dispense FOOD for immediate service and human consumption; and
4. If the mobile food unit maintains or engages in a public health nuisance specified A.R.S. § 36-601.

C. A mobile food vendor shall for each mobile food unit:

1. Obtain a state-license that includes a statewide inspection specified in subsection (H).
2. Obtain a renewal state-license annually that includes a statewide inspection specified in subsection (H).
3. Except for the county in which a mobile food unit has a state-license, obtain a permit annually for each county where the mobile food unit operates.
4. Ensure all employees have a valid food handler card or a certificate from an accredited food handler training-provider as specified in the FC.
5. Comply with random statewide inspections at no additional cost except as provided in A.R.S. § 11-269.24.

D. A mobile food unit:

1. Shall display in a conspicuous location for public viewing the mobile food unit's:
   a. State-license, and
   b. County permits, if applicable.
2. Shall clearly indicate on the sides or back of the exterior of the vehicle in permanent letters the name of the licensed FOOD ESTABLISHMENT.
3. Shall report to a commissary or other serving area, as applicable, at least every 96 hours following A.R.S. § 11-269.24 or as determined by the county in which the mobile food unit's commissary is located for receiving necessary services during operations to ensure public health and safety.
4. May sell a cottage FOOD prepared for commercial purposes specified in R9-8-118(B)(13).
5. Is not required to operate a specific distance from the perimeter of an existing commercial establishment or restaurant.
6. Shall operate during hours determined by the mobile food vendor.
7. Shall ensure toilet facilities are accessible to employees at a location where the mobile food unit is proposed to stay during all hours of operation.

E. A mobile food unit's state-license shall indicate the mobile food unit classification based on the type of FOOD dispensed and the amount of handling and preparation required:

1. Type I mobile food unit is a FOOD ESTABLISHMENT that dispenses FOOD that are commercially processed, individually PACKAGED and frozen that requires time/temperature control for safety.
2. Type II mobile food unit is a FOOD ESTABLISHMENT that dispenses FOOD that requires limited handling and preparation and:
   a. Includes assemble-serve, heat-serve, and hold-serve of commercially processed FOOD;
   b. Except for bacon-wrapped hotdogs pre-wrapped at a mobile food unit's commissary, shall not cook raw animal FOOD for service from the mobile food unit;
   c. Shall only use produce that is commercially pre-washed or washed in advance at a commissary; and
   d. All cooking, processing, preparing, grilling, assembling, storage, and service of any FOOD shall be conducted from the mobile food unit and commissary.
3. Type III mobile food unit is a FOOD ESTABLISHMENT that prepares, cooks, holds, and serves FOOD and:
   a. Includes assemble-serve, heat-serve, cook-serve, and hold-serve of commercially processed FOOD;
   b. May prepare raw animal FOOD for service from the mobile food unit; and
   c. All cooking, processing, preparing, grilling, assembling, storage, and service of any FOOD shall be conducted inside the mobile food unit and commissary.

F. A mobile food vendor for each mobile food unit shall have a written agreement with a commissary or other servicing area, as applicable, located in the county that issues a mobile food unit's state-license:

1. Is APPROVED by a REGULATORY AUTHORITY as safe and sanitary for FOOD preparation consistent with the FC and other state statutes and laws;
2. Has a signed agreement with a commissary that includes:
   a. The commissary's name, address, and telephone number;
   b. The commissary's permit number issued by a REGULATORY AUTHORITY;
   c. The mobile food vendor's name, address, and telephone number;

d. The manager's name, address, and telephone number, if applicable;
e. A list of services to be provided to the mobile food vendor; and
f. The expiration date of the agreement, if applicable; or

3. Has a signed agreement with an other servicing area that includes:
a. The other servicing area's name, address, and telephone number;
b. The other servicing area's permit number, if applicable, issued by a REGULATORY AUTHORITY or other jurisdiction having authority to regulate the other servicing area;
c. The mobile food vendor's name, address, and telephone number;
d. The manager's name, address, and telephone number, if applicable;
e. A list of services to be provided to the mobile food vendor; and
f. The expiration date of the agreement, if applicable.

G. A mobile food vendor for each mobile food unit shall maintain a service log in a Department-provided format that:
1. Documents the type of services, specified in subsection (E), and dates received;
2. Is maintained in the mobile food unit for at least a period of 30 days; and
3. Is made available to a REGULATORY AUTHORITY upon request.

H. In addition to complying with the FC incorporated by reference in this Article, a mobile food unit is required to maintain general physical and operation requirements for:
1. Installation of compressors, generators, and similar mechanical units that are not an integral part of the FOOD preparation or storage equipment;
2. Waste disposal requirements during and after operation on public or private property, which may not include the size or dimensions of any required solid waste receptacle; and
3. A mobile food unit and equipment used in the mobile food unit shall:
a. Be free of dirt, debris, insects, and vermins;
b. Be maintained in a clean and sanitary condition;
c. Be in good repair and maintained according to manufacturer's requirement, as applicable;
d. Be properly ventilated; and
e. Not maintain or engage a public health nuisance.

I. A mobile food unit statewide inspection shall ensure:
1. A Type I mobile food unit:
a. Has equipment, including compressors, generators, and similar mechanical units approved by the National Sanitation Foundation or American National Standards Institute;
b. If selling or dispensing open FOOD, has a handwashing station that:
i. Is at least a 5 gallon insulated container for potable water that ensures proper handwashing consistent with FC;
ii. Has a catch-bucket to retain waste water generated from handwashing that is 15% greater than the potable water tank; and
iii. Has adequate soap and paper towels for time in service; and
c. Does not cook, prepare, or assemble FOOD.

2. A Type II mobile food unit:
a. Has equipment, including compressors, generators, and similar mechanical units are approved by the National Sanitation Foundation or American National Standards Institute;
b. Has a potable water tank that is at least five gallons;
c. Has a waste water tank that is 15% greater than the potable water tank and any other applicable hot water storage or water storage capacity;
d. Has a handwash sink;
e. Has a combination mixing faucet of hot and cold water at all sinks;
f. Has plumbing connections;
g. Has a waste water tank to drain at lowest point of tank;
h. Has a water tank with a fill connection located at the top;
i. Has a National Sanitation Foundation or American National Standards Institute approved FOOD grade water hose;
j. Has a water heater or other APPROVED hot water source; and
k. Has a quick-disconnect design for sewer and potable water.

3. In addition to subsection (I)(2)(a) through (k), a Type III mobile food unit:
a. Has a three-compartment sink that includes:
i. A potable water system under pressure, supplying hot and cold water with a minimum capacity of 30 gallons permanently installed for warewashing, sanitization, and handwashing;
ii. A waste water capacity that is 15% greater than the potable water tank; and
iii. A minimum flow rate of one-half gallon per minute; and
b. May include a FOOD preparation sink for the purpose of washing product if an additional 20 gallons of potable water is available for use.

J. Except for the Department, regulatory authorities through delegation in the county where a mobile food vendor's commissary is located shall issue state licensure and statewide inspection standards adopted pursuant to this Section.

Historical Note
New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-111. Compliance and Enforcement, Annex 1

A. The Department incorporates FC Annex 1 in whole, unless otherwise specified:
1. Section 1, Purpose;
2. Section 2, Explanation;
3. Section 3, Principle;
4. Section 4, Recommendation; and
5. Section 5, Parts in part.

B. In Annex 1, Section 5, the Department does not accept Part 8-911.10(B).

C. In addition to Annex 1, Section 5, the Department adds licensure suspension or revocation requirements that:
1. A REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT license if the license holder:
a. Maintains or engages in a public health nuisance;

b. Falsifies records to interfere with or obstruct an investigation or regulatory process of the REGULATORY AUTHORITY; or
c. Provides false or misleading information to a regulatory authority.

2. A license revocation or suspension hearing shall be conducted as follows:
a. If a REGULATORY AUTHORITY is the Department, a hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10;
b. If a REGULATORY AUTHORITY is a public health district, local health department, department of environmental services, or department of environmental quality, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 or Article 10.

D. In addition to Annex 1, Section 5, the Department adds cease and desist requirements that:
1. If a REGULATORY AUTHORITY determines a FOOD ESTABLISHMENT is creating, maintaining, or engaging a public health nuisance the REGULATORY AUTHORITY shall serve the FOOD ESTABLISHMENT'S license holder a written cease and desist order pursuant to A.R.S. Title 36, Chapter 6, Article 1.
2. If a written notice of appeal is not provided as specified in A.R.S. § 36-601(B), the cease and desist order shall become final.

Historical Note

Amended effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-112. References, Annex 2

The Department incorporates FC Annex 2 in whole:
1. Section 1, United States Code and Code of Federal Regulations;
2. Section 2, Bibliography;
3. Section 3, Principle; and
4. Section 4, Food Defense Guidance from Farm to Table.

Historical Note

Former Section R9-8-112 repealed, new Section R9-8-112 adopted effective July 10, 1979 (Supp. 79-4). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-113. Public Health Reasons and Administrative Guidelines, Annex 3

The Department incorporates FC Annex 3 in whole:
1. Section 1, Purpose and Definitions;
2. Section 2, Management and Personnel;
3. Section 3, Food;
4. Section 4, Equipment, Utensils, and Linens;
5. Section 5, Water, Plumbing, and Waste;
6. Section 6, Physical Facilities;
7. Section 7, Poisonous or Toxic Materials; and
8. Section 8, Compliance and Enforcement.

Historical Note

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-114. Management of Food Safety Practices, Annex 4

The Department incorporates FC Annex 4 in whole:
1. Section 1, Active Managerial Control;
2. Section 2, Introduction to HACCP;
3. Section 3, The HACCP Principles;
4. Section 4, The Process Approach - A Practical Application of HACCP;
5. Section 5, FDA Retail HACCP Manuals;
6. Section 6, Advantages of Using the Principles of HACCP;
7. Section 7, Summary;
8. Section 8, Acknowledgements; and
9. Section 9, Resources and References.

Historical Note

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-115. Conducting Risk-based Inspections, Annex 5

The Department incorporates FC Annex 5 in whole:
1. Section 1, Purpose and Scope;
2. Section 2, Risk-Based Routine Inspections;
3. Section 3, What is Needed to Properly Conduct a Risk-Based Inspection;
4. Section 4, Risk-Based Inspection Methodology;
5. Section 5, Achieving On-Site and Long-Term Compliance;
6. Section 6, Inspection Form and Scoring;
7. Section 7, Closing Conference; and
8. Section 8, Summary.

Historical Note

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-116. Food Processing Criteria, Annex 6

The Department incorporates FC Annex 6 in whole:
1. Section 1, Introduction;
2. Section 2, Reduced Oxygen Packaging; and
3. Section 3, Smoking and Curing.

Historical Note

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-117. Model Forms, Guides, and Other Aids, Annex 7

The Department incorporates FC Annex in whole:
1. Section 1, Employee Health Information;
2. Section 2, Adoption Information; and
3. Section 3, Summary Information.

Historical Note

Corrected Article reference (Supp. 77-3). Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section made by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3).

R9-8-118. Exempt from Requirements and Inspections

A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.

B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:

1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
2. Group homes, as defined in A.R.S. § 36-551;
3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
12. FOOD that is:
    a. Served at a noncommercial social event, such as a potluck;
    b. Prepared at a cooking school if:
        i. The cooking school is conducted in the kitchen of an owner-occupied home,
        ii. Only one meal per day is prepared and served by students of the cooking school,
        iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
        iv. The students of the cooking school are provided with written notice that the FOOD is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
    c. Not time/temperature control for safety food 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 fund-raising, or an employee social event;
    e. A demonstration of FOOD preparation or cooking class offered by:
        i. A culinary school or educational institution and all FOOD prepared is consumed by attending students;
        ii. A school or business and samples are not offered for human consumption; and
        iii. A business where an individual provides, prepares, cooks, and consumes their own FOOD.
    f. Offered at a child care facility and limited to commercially pre-packaged FOOD that is not time/temperature control for safety food and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
    g. Offered at locations that sell only commercially prepackaged FOOD that is not time/temperature control for safety food;
13. A cottage FOOD product, as defined in A.R.S. § 36-136(Q), prepared for commercial purposes that:
    a. Is not time/temperature control for safety food as defined in A.R.S. § 36-136(I)(4)(g); or
    b. Is not a FOOD that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
    c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:
        i. Has a certificate of completion from completing a food handler training course from an accredited program;
        ii. Maintains an active certification of completion; and
        iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and
    d. Is PACKAGED at the home with an attached label that includes:
        i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);
        ii. A list of the ingredients in the cottage FOOD;
        iii. The date the cottage FOOD was prepared; and
        iv. The statement: This product was produced in a home kitchen that may process common FOOD allergens and is not subject to public health inspection; and
        v. If applicable, a statement that the cottage FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities.
14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.
15. Microbreweries, farm wineries, or craft distilleries licensed by the Department of Liquor Licenses and Control that sell only commercially prepackaged wrapped foods, crackers, or pretzels that are not time or temperature controlled and are served for immediate consumption.
16. Spirituous liquor, as defined in A.R.S. § 4-101, produced on the premises licensed by the Department of Liquor Licenses and Control including the area in which production and manufacturing of spirituous liquor occurs and does not provide, allow, or expose a common use cup, glass, or other receptacle used for drinking purposes without the receptacle being thoroughly cleansed and sanitized between consecutive uses, as specified in A.R.S. § 36-136.

C. A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage FOOD for commercial purpose.

D. To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:

1. Complete a food handler training course from an accredited program;
2. Register with the Department by submitting:
   a. An application in a Department-provided format that includes:
      i. The food preparer's name, address, telephone number, and email address;
      ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and email address;
      iii. The address, including the county, of the home where the cottage FOOD is prepared;
      iv. Whether the home where the cottage FOOD is prepared is a facility for developmentally disabled individuals; and
      v. A description of each cottage FOOD prepared for commercial purposes;
   b. A copy of the food preparer's certificate of completion for the completed food handler training course;
   c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
   d. An attestation in a Department-provided format that the food preparer:
      i. Has reviewed Department-provided information on FOOD safety and safe FOOD handling practices;
      ii. Based on the Department-provided information, believes that the cottage FOOD prepared for commercial purposes is not time/temperature control for safety food or is not a FOOD that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
      iii. Includes the food preparer's printed name and date.
3. Maintain an active certification of completion for the completed food handler training course;
4. Renew the registration in subsection (D)(2) every three years;
5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
6. Display the food preparer's certificate of registration when operating as a temporary FOOD ESTABLISHMENT and selling cottage FOOD.

E. Food establishments shall have until January 31, 2022 to comply with the certified food protection manager requirement specified in this Article.

Historical Note

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section R9-8-118 renumbered from R9-8-102 and amended by final rulemaking at 26 A.A.R. 1516, with an immediate effective date of July 8, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 30 A.A.R. 237 (February 2, 2024), with an immediate effective date of January 10, 2024 (Supp. 24-1).

R9-8-119. Manufactured Food Plants

A. The following definitions apply to this Section, unless otherwise specified:

1. "Consumer" means a person who:
   a. Is a member of the public,
   b. Takes possession of FOOD,
   c. Is not functioning in the capacity of an operator of a manufacture food plant, and
   d. Does not offer the FOOD for resale.
2. "FOOD PROCESSING PLANT" means a commercial operation that:
   a. Manufactures, packages, labels, or stores FOOD for human consumption;
   b. Provides FOOD for sale or distribution to other business entities such as FOOD ESTABLISHMENTS and retailers; and
   c. Does not provide FOOD directly to a consumer.

B. In FC Part 3-2, Subpart 3-202, the Department:

1. In paragraph 3-203.11(A) requires "Except as specified in (B), (C), and (D) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or preparation in a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY."
2. In paragraph 3-203.12(C) requires "The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:
   a. Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and
   b. If SHELLSTOCK are removed from their tagged or labeled container:
      i. Using only one tagged or labeled container at a time, or
      ii. Using more than one tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:
         (a) Is submitted by the license holder and APPROVED as specified under § 8-103.11,
         (b) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and
         (c) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY."

Historical Note

Section repealed by final rulemaking at 7 A.A.R. 1719, effective October 3, 2001 (Supp. 01-2). New Section

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 department, environmental department 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 monies 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 that are 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 that are 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 meatpacking 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 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 prepared in a kitchen of a private home for

commercial purposes consistent with chapter 8, article 2 of this title.

(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.

(k) Spirituous liquor produced by a producer that is licensed by the department of liquor licenses and control or spirituous liquor imported and sold by wholesalers that is licensed by the department of liquor licenses and control. This exemption includes all commercially prepackaged spirituous liquor and all spirituous liquor poured at a licensed special event, festival or fair in this state.

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 identifying, storing, handling and selling 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 submitting 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. Confidential information may not 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 and chapter 8, article 2 of this title. 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 this 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 if 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" has the same meaning prescribed in section 36-931.

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.

36-931. Definitions

In this article, unless the context otherwise requires:

1. "Cottage food product":

(a) Means a food that is prepared in a home kitchen by or under the direct supervision of an individual who is registered with the department and that either, as defined by the department in rule:

(i) Is not potentially hazardous or does not require time or temperature control for safety.

(ii) Is potentially hazardous or requires time or temperature control for safety.

(b) Does not include alcoholic beverages, unpasteurized milk or foods that are or that contain alcoholic beverages, fish and shellfish products, meat, meat by-

products, poultry or poultry by-products unless the sale of those items is allowed by federal law, including all of the following:

(i) Poultry, poultry by-products or poultry food products if the registered food preparer raised the poultry pursuant to the one thousand bird exemption set forth in 9 Code of Federal Regulations section 381.10(c).

(ii) Poultry, poultry by-products or poultry food products if the poultry is from an inspected source pursuant to 9 Code of Federal Regulations section 381.10(d).

(iii) Meat, meat by-products or meat food products if the meat is from an inspected source pursuant to 9 Code of Federal Regulations section 303.1(d).

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

3. "Home kitchen" means a kitchen in either, as applicable:

(a) The residential home or dwelling of the individual who is registered with the department to prepare cottage food products, of a type that is normally found in a residential home and that does not exceed one thousand square feet.

(b) A facility for individuals with developmental disabilities and of a type normally found in a facility for individuals with developmental disabilities.

4. "Potentially hazardous" means that a cottage food product does not 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.

5. "Third-party food delivery platform" means an online business that acts as an intermediary between consumers and multiple food facilities to submit food orders from a consumer to a participating food facility and to arrange for the delivery of the order from the food facility to the consumer.

36-932. Labeling; food handler certification; sale and delivery requirements

A. Cottage food products must be packaged at home with an attached label in a clear and legible printed or handwritten font that does all of the following:

1. Clearly states the name and registration number of the food preparer.

2. Lists all the ingredients in the cottage food product and the cottage food product's production date.

3. Includes the following statement: "This product was produced in a home kitchen that may come in contact with common food allergens and pet allergens and is not subject to public health inspection."

4. If the cottage food product was made in a facility for individuals with developmental disabilities, discloses that fact.

5. Includes a website address provided by the department that includes all of the following:

(a) Contact information for consumers to report foodborne illnesses.

(b) Information on how to verify a food preparer's active registration status.

(c) Contact information for reporting issues regarding a food preparer's registration status.

B. If a cottage food product is offered for sale online, the food preparer must provide a prominent notification that includes all of the following:

1. The name and registration number of the food preparer.

2. A list of all ingredients in the cottage food product and the cottage food product's production date.

3. The following statement: "This product was produced in a home kitchen that may come in contact with common food allergens and pet allergens and is not subject to public health inspection."

4. A website address provided by the department that includes all of the following:

(a) Contact information for consumers to report foodborne illnesses.

(b) Information on how to verify a food preparer's active registration status.

(c) Contact information for reporting issues regarding a food preparer's registration status.

C. The person preparing the cottage food product or directly 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 the online registry established by the department pursuant to section 36-136, subsection I, paragraph 13. The food preparer must display the

preparer's certificate of registration when operating as a temporary food establishment.

D. A food preparer:

1. Except as otherwise provided in this article, may sell cottage food products to the maximum extent allowed by federal law.

2. May not store cottage food products or food preparation equipment outside of the food preparer's home.

E. Cottage food products may be sold and delivered only under the following conditions:

1. Cottage food products that do not contain dairy, meat or poultry must be sold by the food preparer of the cottage food product or an agent of the food preparer, including a third-party vendor, and delivered to the consumer by the food preparer, the agent of the food preparer, the third-party vendor or a third-party carrier.

2. Cottage food products that are dairy products or that contain meat or poultry must be sold by the food preparer of the cottage food product in person or remotely, including over the internet but excluding third-party food delivery platforms, and delivered to the consumer in person.

3. If a cottage food product is potentially hazardous or requires time or temperature control for safety and is transported before final delivery to consumers, the cottage food product must be maintained at an appropriate temperature during transport, cannot be transported more than once and cannot be transported for longer than two hours.

4. If a cottage food product is sold by a third-party vendor, the cottage food product must be sold in a separate section of the store or on a separate display case from nonhomemade food items and the vendor must display a sign that indicates that the cottage food products are homemade and exempt from state licensing and inspection.

F. A cottage food product may not:

1. Be used as an ingredient in food products sold at a permitted retail food establishment.

2. Include marijuana or marijuana by-products.

G. A cottage food product shall contain only ingredients that are from sources that are approved by law.

H. A home kitchen that is used to prepare cottage food products may not operate as a commissary for the purposes of section 36-1761.

36-933. Applicability of article; rules; enforcement

A. This article:

1. Is not more restrictive than the applicable federal laws.

2. Does not impede the department from investigating any reported foodborne illness.

3. Does not change the requirements for brand inspections, animal health inspections or any food inspections required by state or federal law, or change the requirements for the sale of milk, milk products, raw milk or raw milk products pursuant to section 3-606.

4. Does not affect any county or municipal building code, zoning code or ordinance or other land use regulation.

B. The department shall adopt rules relating to cottage food products that are consistent with this article and section 36-136, subsection I and that include both of the following:

1. A provision requiring recertification as a food handler or suspension or revocation of an individual's registration for failing to comply with the requirements of this article or impeding in the investigation of a reported foodborne illness.

2. Guidance relating to approved ingredient sources.

C. The department may enforce this article.

D. A county may not be required to enforce this article.

E. This article does not prevent the department and a local health agency, environmental agency or public health services agency from entering into a delegation agreement to enforce this article.

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

CHAPTER 18

HOUSE BILL 2042

AN ACT

AMENDING SECTION 36-136, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO THE DEPARTMENT OF HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-136, Arizona Revised Statutes, is amended to read:

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~~ DEPARTMENT, environmental ~~agency~~ DEPARTMENT 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~~ MONIES 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 THAT ARE 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~~ MEATPACKING 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~~ CONSISTENT WITH CHAPTER 8, ARTICLE 2 OF THIS TITLE. ~~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~~ IDENTIFYING, ~~storage~~ STORING, handling and ~~sale of~~ SELLING 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~~ SUBMITTING 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 MAY NOT 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 AND CHAPTER 8, ARTICLE 2 OF THIS TITLE. 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~~ THIS 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~~ IF 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~~ HAS THE SAME MEANING PRESCRIBED IN SECTION 36-931.

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.

Sec. 2. Title 36, chapter 8, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. COTTAGE FOOD PRODUCTS

36-931. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COTTAGE FOOD PRODUCT":

(a) MEANS A FOOD THAT IS PREPARED IN A HOME KITCHEN BY OR UNDER THE DIRECT SUPERVISION OF AN INDIVIDUAL WHO IS REGISTERED WITH THE DEPARTMENT AND THAT EITHER, AS DEFINED BY THE DEPARTMENT IN RULE:

(i) IS NOT POTENTIALLY HAZARDOUS OR DOES NOT REQUIRE TIME OR TEMPERATURE CONTROL FOR SAFETY.

(ii) IS POTENTIALLY HAZARDOUS OR REQUIRES TIME OR TEMPERATURE CONTROL FOR SAFETY.

(b) DOES NOT INCLUDE ALCOHOLIC BEVERAGES, UNPASTEURIZED MILK OR FOODS THAT ARE OR THAT CONTAIN ALCOHOLIC BEVERAGES, FISH AND SHELLFISH PRODUCTS, MEAT, MEAT BY-PRODUCTS, POULTRY OR POULTRY BY-PRODUCTS UNLESS THE SALE OF THOSE ITEMS IS ALLOWED BY FEDERAL LAW, INCLUDING ALL OF THE FOLLOWING:

(i) POULTRY, POULTRY BY-PRODUCTS OR POULTRY FOOD PRODUCTS IF THE REGISTERED FOOD PREPARER RAISED THE POULTRY PURSUANT TO THE ONE THOUSAND BIRD EXEMPTION SET FORTH IN 9 CODE OF FEDERAL REGULATIONS SECTION 381.10(c).

(ii) POULTRY, POULTRY BY-PRODUCTS OR POULTRY FOOD PRODUCTS IF THE POULTRY IS FROM AN INSPECTED SOURCE PURSUANT TO 9 CODE OF FEDERAL REGULATIONS SECTION 381.10(d).

(iii) MEAT, MEAT BY-PRODUCTS OR MEAT FOOD PRODUCTS IF THE MEAT IS FROM AN INSPECTED SOURCE PURSUANT TO 9 CODE OF FEDERAL REGULATIONS SECTION 303.1(d).

2. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

3. "HOME KITCHEN" MEANS A KITCHEN IN EITHER, AS APPLICABLE:

(a) THE RESIDENTIAL HOME OR DWELLING OF THE INDIVIDUAL WHO IS REGISTERED WITH THE DEPARTMENT TO PREPARE COTTAGE FOOD PRODUCTS, OF A TYPE THAT IS NORMALLY FOUND IN A RESIDENTIAL HOME AND THAT DOES NOT EXCEED ONE THOUSAND SQUARE FEET.

(b) A FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES AND OF A TYPE NORMALLY FOUND IN A FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

4. "POTENTIALLY HAZARDOUS" MEANS THAT A COTTAGE FOOD PRODUCT DOES NOT 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.

5. "THIRD-PARTY FOOD DELIVERY PLATFORM" MEANS AN ONLINE BUSINESS THAT ACTS AS AN INTERMEDIARY BETWEEN CONSUMERS AND MULTIPLE FOOD FACILITIES TO SUBMIT FOOD ORDERS FROM A CONSUMER TO A PARTICIPATING FOOD FACILITY AND TO ARRANGE FOR THE DELIVERY OF THE ORDER FROM THE FOOD FACILITY TO THE CONSUMER.

36-932. Labeling; food handler certification; sale and delivery requirements

A. COTTAGE FOOD PRODUCTS MUST BE PACKAGED AT HOME WITH AN ATTACHED LABEL IN A CLEAR AND LEGIBLE PRINTED OR HANDWRITTEN FONT THAT DOES ALL OF THE FOLLOWING:

1. CLEARLY STATES THE NAME AND REGISTRATION NUMBER OF THE FOOD PREPARER.

2. LISTS ALL THE INGREDIENTS IN THE COTTAGE FOOD PRODUCT AND THE COTTAGE FOOD PRODUCT'S PRODUCTION DATE.

3. INCLUDES THE FOLLOWING STATEMENT: "THIS PRODUCT WAS PRODUCED IN A HOME KITCHEN THAT MAY COME IN CONTACT WITH COMMON FOOD ALLERGENS AND PET ALLERGENS AND IS NOT SUBJECT TO PUBLIC HEALTH INSPECTION."

4. IF THE COTTAGE FOOD PRODUCT WAS MADE IN A FACILITY FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES, DISCLOSES THAT FACT.

5. INCLUDES A WEBSITE ADDRESS PROVIDED BY THE DEPARTMENT THAT INCLUDES ALL OF THE FOLLOWING:

(a) CONTACT INFORMATION FOR CONSUMERS TO REPORT FOODBORNE ILLNESSES.

(b) INFORMATION ON HOW TO VERIFY A FOOD PREPARER'S ACTIVE REGISTRATION STATUS.

(c) CONTACT INFORMATION FOR REPORTING ISSUES REGARDING A FOOD PREPARER'S REGISTRATION STATUS.

B. IF A COTTAGE FOOD PRODUCT IS OFFERED FOR SALE ONLINE, THE FOOD PREPARER MUST PROVIDE A PROMINENT NOTIFICATION THAT INCLUDES ALL OF THE FOLLOWING:

1. THE NAME AND REGISTRATION NUMBER OF THE FOOD PREPARER.

2. A LIST OF ALL INGREDIENTS IN THE COTTAGE FOOD PRODUCT AND THE COTTAGE FOOD PRODUCT'S PRODUCTION DATE.

3. THE FOLLOWING STATEMENT: "THIS PRODUCT WAS PRODUCED IN A HOME KITCHEN THAT MAY COME IN CONTACT WITH COMMON FOOD ALLERGENS AND PET ALLERGENS AND IS NOT SUBJECT TO PUBLIC HEALTH INSPECTION."

4. A WEBSITE ADDRESS PROVIDED BY THE DEPARTMENT THAT INCLUDES ALL OF THE FOLLOWING:

(a) CONTACT INFORMATION FOR CONSUMERS TO REPORT FOODBORNE ILLNESSES.

(b) INFORMATION ON HOW TO VERIFY A FOOD PREPARER'S ACTIVE REGISTRATION STATUS.

(c) CONTACT INFORMATION FOR REPORTING ISSUES REGARDING A FOOD PREPARER'S REGISTRATION STATUS.

C. THE PERSON PREPARING THE COTTAGE FOOD PRODUCT OR DIRECTLY 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 THE ONLINE REGISTRY ESTABLISHED BY THE DEPARTMENT PURSUANT TO SECTION 36-136, SUBSECTION I, PARAGRAPH 13. THE FOOD PREPARER MUST DISPLAY THE PREPARER'S CERTIFICATE OF REGISTRATION WHEN OPERATING AS A TEMPORARY FOOD ESTABLISHMENT.

D. A FOOD PREPARER:

1. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, MAY SELL COTTAGE FOOD PRODUCTS TO THE MAXIMUM EXTENT ALLOWED BY FEDERAL LAW.

2. MAY NOT STORE COTTAGE FOOD PRODUCTS OR FOOD PREPARATION EQUIPMENT OUTSIDE OF THE FOOD PREPARER'S HOME.

E. COTTAGE FOOD PRODUCTS MAY BE SOLD AND DELIVERED ONLY UNDER THE FOLLOWING CONDITIONS:

1. COTTAGE FOOD PRODUCTS THAT DO NOT CONTAIN DAIRY, MEAT OR POULTRY MUST BE SOLD BY THE FOOD PREPARER OF THE COTTAGE FOOD PRODUCT OR AN AGENT OF THE FOOD PREPARER, INCLUDING A THIRD-PARTY VENDOR, AND DELIVERED TO THE CONSUMER BY THE FOOD PREPARER, THE AGENT OF THE FOOD PREPARER, THE THIRD-PARTY VENDOR OR A THIRD-PARTY CARRIER.

2. COTTAGE FOOD PRODUCTS THAT ARE DAIRY PRODUCTS OR THAT CONTAIN MEAT OR POULTRY MUST BE SOLD BY THE FOOD PREPARER OF THE COTTAGE FOOD PRODUCT IN PERSON OR REMOTELY, INCLUDING OVER THE INTERNET BUT EXCLUDING THIRD-PARTY FOOD DELIVERY PLATFORMS, AND DELIVERED TO THE CONSUMER IN PERSON.

3. IF A COTTAGE FOOD PRODUCT IS POTENTIALLY HAZARDOUS OR REQUIRES TIME OR TEMPERATURE CONTROL FOR SAFETY AND IS TRANSPORTED BEFORE FINAL DELIVERY TO CONSUMERS, THE COTTAGE FOOD PRODUCT MUST BE MAINTAINED AT AN APPROPRIATE TEMPERATURE DURING TRANSPORT, CANNOT BE TRANSPORTED MORE THAN ONCE AND CANNOT BE TRANSPORTED FOR LONGER THAN TWO HOURS.

4. IF A COTTAGE FOOD PRODUCT IS SOLD BY A THIRD-PARTY VENDOR, THE COTTAGE FOOD PRODUCT MUST BE SOLD IN A SEPARATE SECTION OF THE STORE OR ON A SEPARATE DISPLAY CASE FROM NONHOMEMADE FOOD ITEMS AND THE VENDOR MUST DISPLAY A SIGN THAT INDICATES THAT THE COTTAGE FOOD PRODUCTS ARE HOMEMADE AND EXEMPT FROM STATE LICENSING AND INSPECTION.

F. A COTTAGE FOOD PRODUCT MAY NOT:

1. BE USED AS AN INGREDIENT IN FOOD PRODUCTS SOLD AT A PERMITTED RETAIL FOOD ESTABLISHMENT.

2. INCLUDE MARIJUANA OR MARIJUANA BY-PRODUCTS.

G. A COTTAGE FOOD PRODUCT SHALL CONTAIN ONLY INGREDIENTS THAT ARE FROM SOURCES THAT ARE APPROVED BY LAW.

H. A HOME KITCHEN THAT IS USED TO PREPARE COTTAGE FOOD PRODUCTS MAY NOT OPERATE AS A COMMISSARY FOR THE PURPOSES OF SECTION 36-1761.

36-933. Applicability of article; rules; enforcement

A. THIS ARTICLE:

1. IS NOT MORE RESTRICTIVE THAN THE APPLICABLE FEDERAL LAWS.

2. DOES NOT IMPEDE THE DEPARTMENT FROM INVESTIGATING ANY REPORTED FOODBORNE ILLNESS.

3. DOES NOT CHANGE THE REQUIREMENTS FOR BRAND INSPECTIONS, ANIMAL HEALTH INSPECTIONS OR ANY FOOD INSPECTIONS REQUIRED BY STATE OR FEDERAL LAW, OR CHANGE THE REQUIREMENTS FOR THE SALE OF MILK, MILK PRODUCTS, RAW MILK OR RAW MILK PRODUCTS PURSUANT TO SECTION 3-606.

4. DOES NOT AFFECT ANY COUNTY OR MUNICIPAL BUILDING CODE, ZONING CODE OR ORDINANCE OR OTHER LAND USE REGULATION.

B. THE DEPARTMENT SHALL ADOPT RULES RELATING TO COTTAGE FOOD PRODUCTS THAT ARE CONSISTENT WITH THIS ARTICLE AND SECTION 36-136, SUBSECTION I AND THAT INCLUDE BOTH OF THE FOLLOWING:

1. A PROVISION REQUIRING RECERTIFICATION AS A FOOD HANDLER OR SUSPENSION OR REVOCATION OF AN INDIVIDUAL'S REGISTRATION FOR FAILING TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE OR IMPEDING IN THE INVESTIGATION OF A REPORTED FOODBORNE ILLNESS.

2. GUIDANCE RELATING TO APPROVED INGREDIENT SOURCES.

C. THE DEPARTMENT MAY ENFORCE THIS ARTICLE.

D. A COUNTY MAY NOT BE REQUIRED TO ENFORCE THIS ARTICLE.

E. THIS ARTICLE DOES NOT PREVENT THE DEPARTMENT AND A LOCAL HEALTH AGENCY, ENVIRONMENTAL AGENCY OR PUBLIC HEALTH SERVICES AGENCY FROM ENTERING INTO A DELEGATION AGREEMENT TO ENFORCE THIS ARTICLE.

APPROVED BY THE GOVERNOR MARCH 29, 2024.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2024.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6

Amend: R9-6-403, R9-6-404

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 4

Amend: R9-6-403, R9-6-404

Summary:

This Expedited rulemaking from the Arizona Department of Health Services (Department) seeks to amend two (2) rules in Title 9, Chapter 6, Article 4 related to the AIDS Drug Assistance Program (ADAP). ADAP is a predominantly federally funded program designed to help those who have been infected with HIV and to help reduce the spread of HIV related diseases. The Department is required to make rules deemed necessary for detecting, reporting, preventing and controlling communicable and preventable diseases.

This rulemaking satisfies the proposed course from the Five-Year-Review Reports (5YRR) approved by the Council on October 1, 2024. The rule amendments will improve the clarity of the rules and will help reduce the administrative burden by removing an incorrect cross reference, specify that an individual cannot be eligible for ADAP benefits if that individual is eligible for health insurance coverage and has voluntarily opted out, and to remove an unnecessary application step.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the rules satisfy the criteria for expedited rulemaking under A.R.S. § 41-1027 (A)(3) and (A)(6) as the rulemaking amends rules that are outdated or need clarification. In addition, the Department cites A.R.S. § 41-1027(A)(7) as this rulemaking makes changes consistent with amendments proposed in the 5YRR approved by the council on October 1, 2024.

2. **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.

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

The Department states no comments were received in response to this rulemaking.

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

The Department states no changes were made between the proposed and final rulemaking.

5. **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 corresponding federal law.

6. **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 the rules do not require a permit or a license.

7. **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 states that no study was relied on or reviewed during the course of this rulemaking.

8. **Conclusion**

This Expedited rulemaking from the Arizona Department of Health Services seeks to amend two rules in Title 9, Chapter 6, Article 4 related to the AIDS Drug Assistance Program. This rulemaking satisfies the criteria of an expedited rulemaking pursuant to A.R.S. § 41-1027(A) because the amendments will provide increased clarity of the rules and ease regulatory burden as proposed in the Five Year Review Report approved by the Council on October 1, 2024.

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

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

October 28, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 4, Expedited Rulemaking

Dear Ms. Klein:

1. The close of record date: October 14, 2024

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking makes changes consistent with the most recent five-year-review report on these rules and amends rules that are outdated or need clarification, meeting the requirements in A.R.S. § 41-1027(A)(3), (6), and (7).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 6, Article 4, relates to a five-year-review report approved by the Council on October 1, 2024.

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

The Department is requesting that the rules be heard at the Council meeting on February 4, 2025.

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

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

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039(B) by the Governor on:

October 28, 2024

2.

Article, Part or Sections Affected (as applicable)	Rulemaking Action
R9-6-403	Amend
R9-6-404	Amend

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

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. § 36-136(I)

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately on the filing of the Notice of Final Expedited Rulemaking pursuant to A.R.S. § 41-1027(H). The effective date is (to be filled in by Register editor).

5. 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: 30 A.A.R. 2844, September 13, 2024

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2953, October 4, 2024

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

Name: Ricardo Fernandez, Ryan White Part B/ADAP Program Director

Address: Arizona Department of Health Services
Public Health Preparedness
150 N. 18th Ave., Suite 110
Phoenix, AZ 85007

Telephone: (602) 364-3854

Fax: (602) 542-1155

E-mail: Ricardo.Fernandez @azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stacie.Gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." The AIDS Drug Assistance Program (ADAP) helps individuals with HIV infection to obtain necessary prescription drugs to prevent the occurrence of, or to alleviate, disability from HIV-related diseases, including AIDS, and to reduce the spread of the disease. The Department has adopted rules for ADAP in 9 A.A.C. 6, Article 4. As specified in a recent five-year-review report for the rules in 9 A.A.C. 6, Article 4, the Department identified a couple of minor issues that needed to be addressed to improve the effectiveness of the rules and reduce the administrative burden. After obtaining approval for the rulemaking according to A.R.S. § 41-1039(A), the Department is revising the rules to address the identified issues. The proposed amendments are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report and reduces steps, procedures, or processes and amends rules that are outdated and unnecessary, while protecting the health and safety of patients and the general public.

8. 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 or rely on any study for this rulemaking.

9. 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

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

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

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received.

13. 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:

Not applicable; the rules do not require the issuance of a 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:

ADAP is mostly funded through federal funds under the Ryan White Comprehensive AIDS Resources Emergency Act (Ryan White CARE Act), Pub. L. 101-381, 104 Stat. 576, enacted August 18, 1990, and follows requirements of the federal funding agency. The rules also impose the same requirements on participants as the applicable provisions of Medicare Part D (*e.g.* 20 CFR Part 418, Subpart D) for acquiring prescription drugs through plans under contract to Medicare. The rules are not more stringent than these federal requirements but are based on a state statute, rather than federal regulation.

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 business competitiveness analysis was received by the Department.

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

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

R9-6-403. Eligibility Requirements

An individual is eligible to enroll in ADAP if the individual:

1. Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;
2. Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(8);
3. Has an annual household income that is less than or equal to 400% of the poverty level; and
4. Satisfies one of the following:
    a. Has no health insurance coverage and has not opted out of health insurance coverage to which the individual is eligible;
    b. Has inadequate health insurance coverage, which may include Medicare or an AHCCCS health plan, limiting the ability of the individual to obtain drugs, such as health insurance coverage that:
        i. Does not cover drugs,
        ii. Does not include on its formulary at least one of the drugs prescribed for the individual, or
        iii. Requires the use of specific pharmacies or higher co-payments for obtaining a drug;
    c. Has health insurance that is unaffordable because premiums exceed 9.5% of the applicant's annual household income;
    d. Is an American Indian or Alaska Native who:
        i. Is eligible for, but chooses not to use, the Indian Health Service or a clinic operated by a sovereign tribal nation to receive drugs; and
        ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c); or
    e. Is an individual who has served in the United States Armed Forces and who:
        i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
        ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c).

R9-6-404. Initial Application Process

A. An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following application packet:

1. An application in a Department-provided format, completed by the applicant or the applicant's representative, containing:
    a. The applicant's name, date of birth, and gender;
    b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
    c. If the applicant is in non-permanent housing, the address of a person that has agreed to receive written communications for the applicant;
    d. If applicable, the address in Arizona to which the applicant would want drugs to be shipped;
    e. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
    f. Either:
        i. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant, or
        ii. An email address for the applicant;
    g. The number of individuals in the applicant's household that can be claimed on the applicant's income taxes and the names and ages of the individuals;
    h. The names of individuals, other than the persons specified in subsection (A)(1)(s)(v), with whom the applicant authorizes the Department to speak about the applicant's enrollment in ADAP;
    i. The applicant's annual household income;
    j. The applicant's race and ethnicity;
    k. Whether the applicant or an adult in the applicant's household:
        i. Is employed;
        ii. Is self-employed;
        iii. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(k)(i) or (ii) and, if so, an identification of the source of the monetary payments; or
        iv. Is using a source not specified in subsections (A)(1)(k)(i) through (iii) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and if so, an identification of the source;
    l. Whether the applicant is receiving health insurance coverage from AHCCCS and:

i. If so, the name of the AHCCCS health plan and the date enrolled; and

ii. If the applicant's eligibility determination for AHCCCS is pending, the date the application for AHCCCS was submitted;

m. Whether the applicant is eligible for Medicare health insurance coverage and, if not, the date on which the applicant will be eligible for Medicare health insurance coverage;

n. If the applicant is eligible for Medicare health insurance coverage, whether:

i. The applicant, or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy; and

ii. Either:

(1) The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; or

(2) The applicant is enrolled in a Medicare drug plan;

o. Whether the applicant or the applicant's spouse has or is eligible to enroll in health insurance coverage other than AHCCCS or Medicare that would pay for drugs on the ADAP formulary;

p. If the applicant or the applicant's spouse is eligible to enroll in health insurance coverage other than Medicare that would pay for drugs on the ADAP formulary but enrollment is closed, the date the next health insurance enrollment period begins;

q. Whether the applicant is eligible to receive benefits from:

i. The Indian Health Service or a clinic operated by a sovereign tribal nation, or

ii. The Veterans Health Administration;

r. Whether the applicant is living in non-permanent housing or is in another situation in which the applicant's financial records to verify annual household income, as specified in subsection (A)(6), are not available to the applicant;

s. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:

i. Understands that, if the annual household income of the applicant is at an amount that may make the applicant eligible for enrollment in AHCCCS, the applicant or the applicant's representative is required to submit to the Department documentation stating the applicant's status for enrollment in

AHCCCS before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

ii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare, understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare and the annual household income of the applicant is less than 175% of the poverty level, understands that the applicant or the applicant's representative is required to submit to Department documentation of the applicant's status for a low-income subsidy before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iv. Except as provided in R9-6-405(E), if the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare, understands that the applicant or the applicant's representative is required to submit to the Department information about the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c), before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

v. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:

(1) AHCCCS, for the purpose of determining AHCCCS eligibility;

(2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;

(3) The applicant's HIV-care provider or designee;

(4) The contract pharmacy or a pharmacy at which the applicant or the applicant's representative may request a drug through ADAP,

to assist with drug distribution;

(5) Other providers of services for persons living with HIV that are funded through Ryan White;

(6) Other providers of HIV-related services, as applicable to the applicant; and

(7) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant or payment of prescription co-payment costs;

vi. Understands that the applicant or the applicant's representative is required to submit to the Department proof of the applicant's annual household income as part of the application; and

vii. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);

t. A statement by the applicant or the applicant's representative attesting that:

i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information and documents provided to the Department in the application packet is accurate and complete;

ii. The applicant meets the eligibility criteria specified in R9-6-403; and

iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and

u. The dated signature of the applicant or the applicant's representative;

2. The information specified in subsection (B), completed by the applicant's HIV-care provider in a Department-provided format;

3. If the annual household income of the applicant is an amount that may make the applicant eligible for enrollment in AHCCCS, a copy of documentation from AHCCCS, dated within 60 calendar days before the date of application, stating the status of the applicant's eligibility for enrollment in AHCCCS;

4. If the applicant is eligible for Medicare, a copy of valid documentation stating:

a. The applicant's enrollment in a Medicare drug plan; and

b. If the applicant's annual household income is at or below 175% of the poverty level, the status of the applicant's eligibility for a low-income subsidy;

5. If the applicant or the applicant's spouse has or is eligible for health insurance coverage other

than AHCCCS or Medicare:

a. Information about the health insurance coverage to enable the Department to determine whether the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c); and

b. If the applicant has other health insurance coverage, documentation confirming the health insurance coverage;

6. Except as provided in subsection (C), proof of the applicant's annual household income, including the following items as applicable to the applicant's household:

a. An income tax return submitted by the applicant for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;

b. If an income tax return in subsection (A)(6)(a) is not available, for each job held by an adult in the household:

i. Paycheck stubs from within 60 calendar days before the date of application, or

ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;

c. If an income tax return in subsection (A)(6)(a) is not available, from each self-employed adult in the household, documentation of the net income from self-employment, such as:

i. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the household;

ii. A profit and loss statement for the self-employed adult's business, covering a period ending no earlier than three months before the date of application; or

iii. Bank statements from the self-employed adult's checking and savings accounts, covering a period ending no earlier than three months before the date of application; and

d. Documentation showing the amount and source of any regular monetary payments received by an adult in the household from sources other than those specified in subsection (A)(6)(a) through subsection (A)(6)(c);

7. If the applicant or the applicant's representative has stated according to subsection ~~(A)(1)(k)(v)~~ (A)(1)(k)(iv) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(6), the following, in a Department-provided format, completed and signed within 30 calendar

days before the date of application, containing:

a. Information completed by the applicant or the applicant's representative stating whether:
    i. An adult in the applicant's household receives money from intermittent work performed by the adult in the household for which no paycheck stub is received and, if so, the average monthly earnings, and the adult's occupation;
    ii. The applicant is living in non-permanent housing;
    iii. The applicant is receiving assistance from another individual; and
    iv. The applicant has another source of assistance for obtaining food, water, housing, and clothing, and, if so, an identification of the source;
b. A statement by the applicant or the applicant's representative attesting that, to the best of the knowledge and belief of the applicant or the applicant's representative, the information submitted under subsection (A)(7)(a) is accurate and complete; and
c. The dated signature of the applicant or the applicant's representative; and

8. Proof that the applicant is a resident of Arizona that includes:
    a. One of the following that shows the Arizona residential address specified according to subsection (A)(1)(b) and the name of the applicant or an adult in the applicant's household:
        i. Documentation issued by a governmental entity related to the applicant's eligibility for benefits, dated within 60 calendar days before the date of application;
        ii. Valid documentation from the Social Security Administration or the Department of Veterans Affairs related to the applicant's eligibility for benefits;
        iii. A property tax statement for the most recent tax year issued by a governmental entity;
        iv. A homeowners' association assessment or fee statement, dated within 60 calendar days before the date of application;
        v. A valid lease agreement;
        vi. A mortgage statement for the most recent tax year;
        vii. A letter issued by an entity providing non-permanent housing to the applicant, dated within 30 calendar days before the date of application;

viii. Any document or mail dated within 60 calendar days before the date of application and received by the applicant, including a utility bill, check stub, or statement of direct deposit issued by an employer, a bank or credit union statement, a credit card statement, a mobile telephone company billing statement, a billing statement or receipt from an HIV-care provider's office, or a document from an insurance company;

ix. A non-expired Arizona driver license issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;

x. A non-expired Arizona vehicle registration issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;

xi. A non-expired Arizona identification card issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months; or

xii. A tribal enrollment card or other type of tribal identification; or

b. If the applicant is unable to produce documentation that satisfies subsection (A)(8)(a), one of the following that includes the name of the applicant or an adult in the applicant's household and is dated within 30 calendar days before the date of application:

i. A written statement issued by the applicant's case manager verifying that the applicant is living in non-permanent housing and a resident of Arizona;

ii. A written statement issued by the applicant's case manager indicating that the case manager has conducted a home visit with the applicant at the Arizona residential address specified according to subsection (A)(1)(b); or

iii. A written statement issued by the applicant's HIV-care provider, verifying that the applicant is a resident of Arizona~~; and~~

~~9. If the applicant or the applicant's representative has stated according to subsection (A)(7) that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative~~.

B. The HIV-care provider of an applicant for initial enrollment in ADAP shall provide:

1. The following information for the applicant in a Department-provided format:
   a. The applicant's name;
   b. The HIV-care provider's name, business address, telephone number, email address,

fax number, and professional license number;

c. A statement that the applicant has been diagnosed with HIV infection;

d. A list of each drug prescribed for the applicant by the HIV-care provider;

e. A statement by the HIV-care provider attesting that, to the best of the HIV-care provider's knowledge and belief, the information provided to the Department as specified in subsection (B) is accurate and complete; and

f. The dated signature of the HIV-care provider;

2. Documentation confirming HIV-infection of the applicant; and

3. A copy of the most recent laboratory report of a test for viral load and, if available, CD4-T-lymphocyte count conducted for the applicant.

C. If an applicant or the applicant's representative stated in subsection (A)(1)(r) that the applicant is in a situation in which the applicant's financial records to verify annual household income, as required in subsection (A)(6), are not available to the applicant, the applicant or the applicant's representative may submit to the Department a statement describing the applicant's situation and provide whatever documentation the applicant has available to demonstrate the applicant's annual household income.

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

R9-6-401. Definitions

In this Article, unless otherwise specified:

1. "ADAP" means the AIDS Drug Assistance Program.
2. "Adult" means an individual who is:
   a. Eighteen or more years old;
   b. Married; or
   c. Emancipated, as specified in A.R.S. Title 12, Chapter 15.
3. "AHCCCS" means the Arizona Health Care Cost Containment System.
4. "Annual household income" means the adjusted gross income of all adult individuals within a household, as would be reported on the federal income tax return for an individual in the household, modified to include:
   a. Federal taxable wages,
   b. Tips,
   c. Unemployment compensation,
   d. Social security income,
   e. Self-employment income,
   f. Social security disability income,
   g. Retirement or pension income,
   h. Capital gains,
   i. Investment income,
   j. Rental and royalty income,
   k. Excluded (untaxed) foreign income, and
   l. Alimony.
5. "Applicant" means an individual for whom a request for initial enrollment in ADAP is submitted to the Department, as specified in R9-6-404.
6. "Applying for a low-income subsidy" means submitting forms and supporting documentation to the Social Security Administration for determining eligibility for receiving a low-income subsidy.
7. "Calendar day" means any day of the week, including a Saturday, Sunday, or legal holiday.
8. "Case manager" means an individual who:
   a. Assesses the needs of a person living with HIV for:
      i. Medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401;
      ii. Services not related to the treatment of HIV infection, intended to maintain or improve

the physical, mental, or psychosocial capabilities of a person living with HIV or an individual in the person living with HIV's household;

iii. Housing; or

iv. Financial assistance;

b. If applicable, assists the person living with HIV with obtaining housing, financial assistance, or the services specified in subsection (8)(a)(i) and (ii);

c. Coordinates the interaction of the person living with HIV with individuals providing the services specified in subsection (8)(a)(i) and (ii); and

d. Monitors the interaction of the person living with HIV with individuals providing the services specified in subsection (8)(a)(i) and (ii) to:

i. Determine the effects of the activities of individuals providing the services specified in subsection (8)(a)(i) and (ii) on the needs of the person living with HIV, and

ii. Develop strategies to reduce unmet needs.

9. "CD4-T-lymphocyte count" means the number of a specific type of white blood cell in a cubic millimeter of blood.

10. "Contract pharmacy" means an entity that has a legally binding agreement with the Department to dispense drugs through ADAP to enrolled individuals.

11. "Current" means within the six months before the date on which an:

a. Individual submits the documents specified in R9-6-404 to the Department as an application for initial enrollment in ADAP, or

b. Enrolled individual submits to the Department the documents required in R9-6-407 for continuing enrollment.

12. "Date of application" means the month, day, and year that the Department receives the documents specified in R9-6-404 for enrollment in ADAP.

13. "Drug" means a chemical substance or a compound made by or derived from a plant or animal source that:

a. Has been determined by the U.S. Food and Drug Administration to be useful in the treatment of individuals with HIV infection, and

b. Is available through a prescription order.

14. "Formulary" means a list of drugs that are available to an individual through the individual's health insurance or ADAP.

15. "Health insurance enrollment period" means an interval of time during which an individual may apply for health insurance coverage, including:

a. An annual interval of time, and

b. Any additional intervals of time due to a change in the individual's situation or circumstances.

16. "HIV infection" means the same as in A.R.S. § 36-661.
17. "HIV-care provider" means the physician, registered nurse practitioner, or physician assistant who is treating an applicant or enrolled individual for HIV infection.
18. "Household" means an applicant or enrolled individual and any of the following individuals, as applicable, residing with the applicant or enrolled individual:
    a. The applicant's or enrolled individual's spouse;
    b. A dependent parent;
    c. A parent of a child who is:
        i. The applicant or enrolled individual, and
        ii. Claimed as a dependent by the parent;
    d. A dependent sibling or other relative;
    e. A dependent child of the applicant or enrolled individual, regardless of age and including an adopted child or a foster child;
    f. A non-dependent child or other relative if claimed or could be claimed as a dependent on the applicant's or enrolled individual's taxes; and
    g. A child who is a part of a shared custody agreement of the applicant or enrolled individual, in years for which the child is claimed or could be claimed as a dependent on the applicant's or enrolled individual's taxes.
19. "Job" means a position in which an individual is employed.
20. "Low-income subsidy" means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the annual household income for an individual.
21. "Medicare" means a federal health insurance program established under Title XVIII of the Social Security Act.
22. "Medicare drug plan" means insurance approved by Medicare to cover some of the costs of drugs for individuals enrolled in Medicare.
23. "Non-permanent housing" means a situation in which an individual is:
    a. Living in a place that is not designed to be a sleeping place for human beings or ordinarily used as a primary nighttime sleeping place for human beings, or
    b. Living in a shelter or other temporary living arrangement.
24. "Person living with HIV" means an individual who is HIV-infected.
25. "Physician" means an individual licensed as a:
    a. Doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or through a similar

licensing board in another state; or

b. Doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17, or through a similar licensing board in another state.

26. "Physician assistant" means an individual licensed under A.R.S. Title 32, Chapter 25, or through a similar licensing board in another state.
27. "Poverty level" means the annual household income for a household of a particular size, as specified in the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services.
28. "Pre-approved enrollment status" means that an applicant may receive drugs or other services through ADAP on a temporary basis.
29. "Prescription order" means the same as in A.R.S. § 32-1901.
30. "Registered nurse practitioner" means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601 and is licensed under A.R.S. Title 32, Chapter 15, or through a similar licensing board in another state.
31. "Regular" means recurring at fixed intervals.
32. "Representative" means the:
    a. Guardian of an individual;
    b. Parent of an individual who is not an adult; or
    c. Person designated as an agent for an individual through a power of attorney, as specified in A.R.S. Title 14, Chapter 5, Article 5.
33. "Resident" means an individual who has a place of habitation in Arizona and is living in Arizona.
34. "Self-employed" means receiving money as a direct result of the work performed by an individual rather than from wages or a salary paid to the individual.
35. "Valid" means still in effect or having legal force.
36. "Viral load" means the amount of HIV circulating in the body of an individual.

R9-6-402. Limitations and Termination of Program

ADAP ceases to provide drugs when available funding is exhausted or terminated. ADAP is not an entitlement program and does not create a right to assistance absent available funding.

R9-6-403. Eligibility Requirements

An individual is eligible to enroll in ADAP if the individual:

1. Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;

2. Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(8);
3. Has an annual household income that is less than or equal to 400% of the poverty level; and
4. Satisfies one of the following:
    a. Has no health insurance coverage;
    b. Has inadequate health insurance coverage, which may include Medicare or an AHCCCS health plan, limiting the ability of the individual to obtain drugs, such as health insurance coverage that:
        i. Does not cover drugs,
        ii. Does not include on its formulary at least one of the drugs prescribed for the individual, or
        iii. Requires the use of specific pharmacies or higher co-payments for obtaining a drug;
    c. Has health insurance that is unaffordable because premiums exceed 9.5% of the applicant's annual household income;
    d. Is an American Indian or Alaska Native who:
        i. Is eligible for, but chooses not to use, the Indian Health Service or a clinic operated by a sovereign tribal nation to receive drugs; and
        ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c); or
    e. Is an individual who has served in the United States Armed Forces and who:
        i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
        ii. Either has no other health insurance coverage or has other health insurance coverage that is inadequate or unaffordable, as described in subsections (4)(b) and (c).

R9-6-404. Initial Application Process

A. An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following application packet:

1. An application in a Department-provided format, completed by the applicant or the applicant's representative, containing:
    a. The applicant's name, date of birth, and gender;
    b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
    c. If the applicant is in non-permanent housing, the address of a person that has agreed to receive written communications for the applicant;

d. If applicable, the address in Arizona to which the applicant would want drugs to be shipped;
e. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
f. Either:
    i. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant, or
    ii. An email address for the applicant;
g. The number of individuals in the applicant's household that can be claimed on the applicant's income taxes and the names and ages of the individuals;
h. The names of individuals, other than the persons specified in subsection (A)(1)(s)(v), with whom the applicant authorizes the Department to speak about the applicant's enrollment in ADAP;
i. The applicant's annual household income;
j. The applicant's race and ethnicity;
k. Whether the applicant or an adult in the applicant's household:
    i. Is employed;
    ii. Is self-employed;
    iii. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(k)(i) or (ii) and, if so, an identification of the source of the monetary payments; or
    iv. Is using a source not specified in subsections (A)(1)(k)(i) through (iii) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and if so, an identification of the source;
l. Whether the applicant is receiving health insurance coverage from AHCCCS and:
    i. If so, the name of the AHCCCS health plan and the date enrolled; and
    ii. If the applicant's eligibility determination for AHCCCS is pending, the date the application for AHCCCS was submitted;
m. Whether the applicant is eligible for Medicare health insurance coverage and, if not, the date on which the applicant will be eligible for Medicare health insurance coverage;
n. If the applicant is eligible for Medicare health insurance coverage, whether:
    i. The applicant, or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy; and
    ii. Either:
        (1) The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; or

(2) The applicant is enrolled in a Medicare drug plan;

o. Whether the applicant or the applicant's spouse has or is eligible to enroll in health insurance coverage other than AHCCCS or Medicare that would pay for drugs on the ADAP formulary;

p. If the applicant or the applicant's spouse is eligible to enroll in health insurance coverage other than Medicare that would pay for drugs on the ADAP formulary but enrollment is closed, the date the next health insurance enrollment period begins;

q. Whether the applicant is eligible to receive benefits from:

i. The Indian Health Service or a clinic operated by a sovereign tribal nation, or

ii. The Veterans Health Administration;

r. Whether the applicant is living in non-permanent housing or is in another situation in which the applicant's financial records to verify annual household income, as specified in subsection (A)(6), are not available to the applicant;

s. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:

i. Understands that, if the annual household income of the applicant is at an amount that may make the applicant eligible for enrollment in AHCCCS, the applicant or the applicant's representative is required to submit to the Department documentation stating the applicant's status for enrollment in AHCCCS before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

ii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare, understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iii. Except as provided in R9-6-405(E), if the applicant is eligible for Medicare and the annual household income of the applicant is less than 175% of the poverty level, understands that the applicant or the applicant's representative is required to submit to Department documentation of the applicant's status for a low-income subsidy before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

iv. Except as provided in R9-6-405(E), if the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare, understands that the applicant or the applicant's representative is required to submit to the Department

information about the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c), before the end of the month after the month in which the applicant applied for ADAP, if not provided to the Department with the application;

v. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:
   (1) AHCCCS, for the purpose of determining AHCCCS eligibility;
   (2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
   (3) The applicant's HIV-care provider or designee;
   (4) The contract pharmacy or a pharmacy at which the applicant or the applicant's representative may request a drug through ADAP, to assist with drug distribution;
   (5) Other providers of services for persons living with HIV that are funded through Ryan White;
   (6) Other providers of HIV-related services, as applicable to the applicant; and
   (7) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant or payment of prescription co-payment costs;

vi. Understands that the applicant or the applicant's representative is required to submit to the Department proof of the applicant's annual household income as part of the application; and

vii. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);

t. A statement by the applicant or the applicant's representative attesting that:
   i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information and documents provided to the Department in the application packet is accurate and complete;
   ii. The applicant meets the eligibility criteria specified in R9-6-403; and
   iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and

u. The dated signature of the applicant or the applicant's representative;

2. The information specified in subsection (B), completed by the applicant's HIV-care provider in a Department-provided format;

3. If the annual household income of the applicant is an amount that may make the applicant eligible for enrollment in AHCCCS, a copy of documentation from AHCCCS, dated within 60 calendar days before the date of application, stating the status of the applicant's eligibility for enrollment in AHCCCS;
4. If the applicant is eligible for Medicare, a copy of valid documentation stating:
    a. The applicant's enrollment in a Medicare drug plan; and
    b. If the applicant's annual household income is at or below 175% of the poverty level, the status of the applicant's eligibility for a low-income subsidy;
5. If the applicant or the applicant's spouse has or is eligible for health insurance coverage other than AHCCCS or Medicare:
    a. Information about the health insurance coverage to enable the Department to determine whether the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c); and
    b. If the applicant has other health insurance coverage, documentation confirming the health insurance coverage;
6. Except as provided in subsection (C), proof of the applicant's annual household income, including the following items as applicable to the applicant's household:
    a. An income tax return submitted by the applicant for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
    b. If an income tax return in subsection (A)(6)(a) is not available, for each job held by an adult in the household:
        i. Paycheck stubs from within 60 calendar days before the date of application, or
        ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;
    c. If an income tax return in subsection (A)(6)(a) is not available, from each self-employed adult in the household, documentation of the net income from self-employment, such as:
        i. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the household;
        ii. A profit and loss statement for the self-employed adult's business, covering a period ending no earlier than three months before the date of application; or
        iii. Bank statements from the self-employed adult's checking and savings accounts, covering a period ending no earlier than three months before the date of application; and
    d. Documentation showing the amount and source of any regular monetary payments received by an adult in the household from sources other than those specified in subsection (A)(6)(a)

through subsection (A)(6)(c);

7. If the applicant or the applicant's representative has stated according to subsection (A)(1)(k)(v) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(6), the following, in a Department-provided format, completed and signed within 30 calendar days before the date of application, containing:
    a. Information completed by the applicant or the applicant's representative stating whether:
        i. An adult in the applicant's household receives money from intermittent work performed by the adult in the household for which no paycheck stub is received and, if so, the average monthly earnings, and the adult's occupation;
        ii. The applicant is living in non-permanent housing;
        iii. The applicant is receiving assistance from another individual; and
        iv. The applicant has another source of assistance for obtaining food, water, housing, and clothing, and, if so, an identification of the source;
    b. A statement by the applicant or the applicant's representative attesting that, to the best of the knowledge and belief of the applicant or the applicant's representative, the information submitted under subsection (A)(7)(a) is accurate and complete; and
    c. The dated signature of the applicant or the applicant's representative;
8. Proof that the applicant is a resident of Arizona that includes:
    a. One of the following that shows the Arizona residential address specified according to subsection (A)(1)(b) and the name of the applicant or an adult in the applicant's household:
        i. Documentation issued by a governmental entity related to the applicant's eligibility for benefits, dated within 60 calendar days before the date of application;
        ii. Valid documentation from the Social Security Administration or the Department of Veterans Affairs related to the applicant's eligibility for benefits;
        iii. A property tax statement for the most recent tax year issued by a governmental entity;
        iv. A homeowners' association assessment or fee statement, dated within 60 calendar days before the date of application;
        v. A valid lease agreement;
        vi. A mortgage statement for the most recent tax year;
        vii. A letter issued by an entity providing non-permanent housing to the applicant, dated within 30 calendar days before the date of application;
        viii. Any document or mail dated within 60 calendar days before the date of application and received by the applicant, including a utility bill, check stub, or statement of direct deposit issued by an employer, a bank or credit union statement, a credit card statement, a

mobile telephone company billing statement, a billing statement or receipt from an HIV-care provider's office, or a document from an insurance company;

ix. A non-expired Arizona driver license issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;

x. A non-expired Arizona vehicle registration issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months;

xi. A non-expired Arizona identification card issued by the Arizona Department of Transportation's Motor Vehicle Division within the previous 12 months; or

xii. A tribal enrollment card or other type of tribal identification; or

b. If the applicant is unable to produce documentation that satisfies subsection (A)(8)(a), one of the following that includes the name of the applicant or an adult in the applicant's household and is dated within 30 calendar days before the date of application:

i. A written statement issued by the applicant's case manager verifying that the applicant is living in non-permanent housing and a resident of Arizona;

ii. A written statement issued by the applicant's case manager indicating that the case manager has conducted a home visit with the applicant at the Arizona residential address specified according to subsection (A)(1)(b); or

iii. A written statement issued by the applicant's HIV-care provider, verifying that the applicant is a resident of Arizona; and

9. If the applicant or the applicant's representative has stated according to subsection (A)(7) that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative.

B. The HIV-care provider of an applicant for initial enrollment in ADAP shall provide:

1. The following information for the applicant in a Department-provided format:
   a. The applicant's name;
   b. The HIV-care provider's name, business address, telephone number, email address, fax number, and professional license number;
   c. A statement that the applicant has been diagnosed with HIV infection;
   d. A list of each drug prescribed for the applicant by the HIV-care provider;
   e. A statement by the HIV-care provider attesting that, to the best of the HIV-care provider's knowledge and belief, the information provided to the Department as specified in subsection (B) is accurate and complete; and
   f. The dated signature of the HIV-care provider;
2. Documentation confirming HIV-infection of the applicant; and

3. A copy of the most recent laboratory report of a test for viral load and, if available, CD4-T-lymphocyte count conducted for the applicant.

C. If an applicant or the applicant's representative stated in subsection (A)(1)(r) that the applicant is in a situation in which the applicant's financial records to verify annual household income, as required in subsection (A)(6), are not available to the applicant, the applicant or the applicant's representative may submit to the Department a statement describing the applicant's situation and provide whatever documentation the applicant has available to demonstrate the applicant's annual household income.

R9-6-405. Enrollment Process; Pre-approved Enrollment Status

A. The Department shall:

1. Review the documents submitted by an applicant as required in R9-6-404(A);
2. Determine whether the applicant is eligible under R9-6-403;
3. Grant or deny enrollment based on applicant eligibility, the date of application, and the availability of funds; and
4. Notify the applicant or the applicant's representative of the Department's decision within five working days after receiving the documents specified in R9-6-404(A).

B. An applicant or the applicant's representative shall execute any consent forms or releases of information necessary for the Department to verify eligibility.

C. The Department shall send an applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03, if:

1. The applicant does not qualify for enrollment in ADAP, based on the documentation provided to establish eligibility;
2. The documentation submitted to the Department under R9-6-404 is found to contain false information; or
3. The Department does not have funds available to enroll the applicant in ADAP.

D. The Department shall grant pre-approved enrollment status in ADAP to an applicant, lasting until the end of the month after the month in which an applicant applied for ADAP, if:

1. The Department determines that the applicant meets the requirement in R9-6-403(1);
2. The applicant, whose annual household income is an amount that may make the applicant eligible for enrollment in AHCCCS, or the applicant's representative attests in writing that the applicant has applied for AHCCCS enrollment but is unable to provide documentation that states the status of the applicant's enrollment in AHCCCS;
3. Except as provided in subsection (E), the applicant, who is eligible for Medicare or other health insurance coverage, or the applicant's representative attests in writing that the applicant has

applied for, but is unable to provide documentation of, enrollment in Medicare and a Medicare drug plan or in other health insurance coverage, as applicable; and

4. The applicant or the applicant's representative attests in writing that the applicant or the applicant's representative will provide, before the end of the period during which the applicant has pre-approved enrollment status, a missing component of:
   a. Proof of the applicant's annual household income, according to R9-6-404(A)(6) or (7); or
   b. Proof of residency, according to R9-6-404(A)(8).

E. The Department shall grant pre-approved enrollment status in ADAP, lasting until the end of the month after the month in which an applicant may apply for Medicare or other health insurance, if the applicant or the applicant's representative provides documentation that the applicant would be eligible for Medicare or other health insurance coverage during the next health insurance enrollment period, but that enrollment was closed on the date of application for ADAP.

F. The Department shall provide an applicant to whom the Department has granted pre-approved enrollment status in ADAP with the drugs on the ADAP formulary during the period during which the applicant has pre-approved enrollment status.

G. Except as specified in subsection (I), to continue ADAP enrollment beyond the period in subsection (D) or (E) during which the applicant has pre-approved enrollment status, an applicant or the applicant's representative shall provide to the Department, before the end of the period, documentation that establishes eligibility according to R9-6-403.

H. Except as specified in subsection (I), if an applicant with pre-approved enrollment status or the applicant's representative fails to provide documentation as required in subsection (G) to the Department before the end of the period during which the applicant has pre-approved enrollment status, the Department shall send the applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03.

I. The Department may grant an extension of pre-approved enrollment status to an applicant beyond the period in subsection (D) or (E) if the applicant or the applicant's representative provides a justification for needing more time to obtain the required documentation to verify eligibility because of missing:

1. Documentation of health insurance coverage;
2. Financial records to verify annual household income, specified in R9-6-404(A)(6);
3. Proof of residency, specified in R9-6-404(A)(8); or
4. Viral load test results on the laboratory report required in R9-6-404(B)(2).

J. Based on the information provided by an applicant about the applicant's health insurance coverage and except as provided in R9-6-409(F), the Department shall:

1. For an applicant with no health insurance coverage, provide a drug on the ADAP formulary through the contract pharmacy;
2. For an applicant with health insurance coverage that is inadequate, according to R9-6-403(4)(b), provide a drug on the ADAP formulary that is not covered by the applicant's health insurance, as documented according to R9-6-409(E), through the contract pharmacy; or
3. For an applicant with health insurance coverage that is unaffordable, according to R9-6-403(4)(c), provide a drug on the ADAP formulary with no copayment cost to the applicant when requesting the filling of a prescription for the drug or obtaining a refill of the drug through ADAP.

R9-6-406. Notification Requirements

A. An enrolled individual or the enrolled individual's representative shall notify the Department in writing or by telephone and comply with the applicable requirements specified in R9-6-407 within 30 calendar days after any of the following occurs:
1. The residential or mailing address or the telephone number of the enrolled individual changes from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
2. The enrolled individual adds or removes an individual with whom the Department may speak about the enrolled individual's ADAP enrollment from the list specified in R9-6-404(A)(1)(h);
3. The enrolled individual has:
   a. Lost health insurance coverage;
   b. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
   c. Been determined eligible for or obtained health insurance coverage, other than through AHCCCS, the Indian Health Service, the Veterans Health Administration, or the health insurance coverage previously used by the enrolled individual; or
   d. Been determined eligible for a low-income subsidy;
4. The enrolled individual's annual household income has changed; or
5. The enrolled individual establishes residency outside Arizona.

B. Within 30 calendar days after an enrolled individual loses health insurance coverage, the enrolled individual shall provide to the Department documentation stating the loss of health insurance coverage.

C. An enrolled individual's case manager shall notify the Department in writing or by telephone within 30 calendar days after the case manager learns that:
1. The residential or mailing address or the telephone number of the enrolled individual has changed from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
2. The enrolled individual:

a. Has been determined eligible for and enrolled to receive drug coverage through AHCCCS;
b. Obtained health insurance coverage other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
c. Has been determined eligible for a low-income subsidy;

3. The enrolled individual's annual household income has changed;
4. The enrolled individual has established residency outside Arizona; or
5. The enrolled individual has died.

R9-6-407. Continuing Enrollment

A. To continue enrollment in ADAP, an enrolled individual or the enrolled individual's representative shall:

1. When the enrolled individual's residential address changes, comply with subsection (B);
2. When the enrolled individual's annual household income changes, comply with subsection (C);
3. When the enrolled individual becomes eligible for Medicare or other health insurance coverage, comply with subsection (D);
4. Before the end of the month that is six months after the enrolled individual's month of birth, comply with subsection (E); and
5. Before the end of the enrolled individual's month of birth each year after an individual's initial enrollment, comply with subsection (F).

B. When an enrolled individual's residential address changes, the enrolled individual or the enrolled individual's representative shall submit to the Department:

1. The following information for the enrolled individual in a Department-provided format:
   a. The enrolled individual's name and date of birth;
   b. The new residential address and mailing address for the enrolled individual;
   c. If the enrolled individual is in non-permanent housing, the address of a person that has agreed to receive written communications for the enrolled individual; and
   d. If applicable, the address in Arizona to which the enrolled individual would want drugs to be shipped; and
2. Proof of Arizona residency, as specified in R9-6-404(A)(8), showing the new Arizona residential address specified in subsection (B)(1)(b).

C. When an enrolled individual's annual household income changes, the enrolled individual or the enrolled individual's representative shall:

1. Submit to the Department, within 30 calendar days after the change, documentation of the enrolled individual's annual household income, as specified in R9-6-404(A)(6) or (7); and

2. If the enrolled individual's annual household income has decreased to an amount that may make the individual eligible for enrollment in AHCCCS:
    a. Apply for enrollment in AHCCCS within 30 calendar days after the change in annual household income; and
    b. Submit to the Department, within 30 calendar days after the change, documentation that states the status of the enrolled individual's enrollment in AHCCCS.

D. When an enrolled individual becomes eligible for Medicare or other health insurance coverage, the enrolled individual or the enrolled individual's representative shall, within 30 calendar days after the enrolled individual becomes eligible for Medicare or other health insurance coverage:

1. If eligible for Medicare:
    a. Enroll in a Medicare drug plan; and
    b. If the enrolled individual's annual household income is at or below 175% of the poverty level, apply for a low-income subsidy; and
    c. Submit to the Department a copy of valid documentation stating:
        i. The enrolled individual's enrollment in a Medicare drug plan; and
        ii. If the enrolled individual's annual household income is at or below 175% of the poverty level, the status of the enrolled individual's eligibility for a low-income subsidy; and
2. If eligible for other health insurance coverage, submit to the Department information about the health insurance coverage to enable the Department to determine if the health insurance coverage is inadequate, according to R9-6-403(4)(b), or unaffordable, according to R9-6-403(4)(c).

E. Before the end of the month that is six months after the enrolled individual's month of birth, the enrolled individual or the enrolled individual's representative shall:

1. Either:
    a. Submit to the Department an attestation, in a Department-provided format, that there have been no changes specified in subsection (A)(1), (2), or (3); or
    b. Comply with subsections (B), (C), and (D), as applicable; and
2. Obtain from the enrolled individual's HIV-care provider and submit to the Department a copy of the most recent laboratory report of a test for viral load, and, if available, CD4-T-lymphocyte count conducted for the applicant.

F. Before the end of an enrolled individual's month of birth each year, an enrolled individual or the enrolled individual's representative shall submit to the Department the application packet required in R9-6-404(A).

G. The Department shall:

1. Review information about an enrolled individual and determine eligibility for continuing

enrollment for the enrolled individual:

a. At the end of the enrolled individual's month of birth each year,
b. At the end of the month that is six months after the enrolled individual's month of birth each year,
c. When the Department receives information from the enrolled individual or the enrolled individual's representative under subsection (A), or
d. When the Department no longer has sufficient funds to provide continuing enrollment to all enrolled individuals;

2. Grant continuing enrollment to an enrolled individual, subject to the availability of funds, when:
   a. The enrolled individual or the enrolled individual's representative complies with subsection (A); and
   b. The Department determines that:
      i. The information in the documents submitted to the Department is accurate and complete, and
      ii. The enrolled individual is eligible under R9-6-403; and
3. Notify the enrolled individual or the enrolled individual's representative of the Department's decision within five working days after receipt of the documents required in subsection (A).

H. The Department may grant pre-approved enrollment status in ADAP, according to R9-6-405(D) or (E) and ending according to R9-6-405(G), to an enrolled individual who is missing documentation to establish eligibility under R9-6-403.

I. If the Department denies continuing enrollment to an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

R9-6-408. Termination from ADAP Services

A. The Department may terminate an enrolled individual's enrollment in ADAP if:

1. The Department learns that information submitted to the Department by the enrolled individual or the enrolled individual's representative under R9-6-404(A) or (C), R9-6-407(A), or R9-6-409(E) or (F) is inaccurate or incomplete;
2. The enrolled individual or the enrolled individual's representative does not request a refill of any drug through ADAP for a period of 90 calendar days; or
3. The enrolled individual or the enrolled individual's representative exhibits violent or threatening behavior to an employee of the Department, the contract pharmacy, or a pharmacy in which the enrolled individual or the enrolled individual's representative is filling a prescription for a drug or

requesting a refill of a drug through ADAP, as established by documentation such as a police report or a written document from the individual.

B. The Department may terminate approval of a drug approved under R9-6-409(E) or (F) for an enrolled individual if funding is no longer available to pay for the drug approved under R9-6-409(E) or (F).

C. The Department shall send to an enrolled individual or the enrolled individual's representative a written notice of termination setting forth the information required under A.R.S. § 41-1092.03 if the Department terminates:

1. The enrolled individual's enrollment in ADAP, or
2. Approval of a drug approved under R9-6-409(E) or (F) for the enrolled individual.

R9-6-409. Drug Prescription and Distribution Requirements

A. A HIV-care provider shall:

1. Issue a prescription order:
   a. For each drug on the ADAP formulary prescribed for an applicant or enrolled individual by the HIV-care provider; and
   b. For dispensing up to a 30-day supply of the drug; and
2. Provide a written prescription order to the applicant or enrolled individual or an electronic prescription order to the contract pharmacy or a pharmacy at which the applicant or enrolled individual may request a drug through ADAP.

B. The Department shall:

1. Except as specified in subsection (D), provide up to a 30-day supply of a drug to an enrolled individual; and
2. Ensure that a drug to be shipped to an enrolled individual is sent to the address in Arizona provided by the enrolled individual according to R9-6-404(A)(1)(d) or R9-6-407(B)(1)(d).

C. The Department may authorize replacement of a drug when:

1. The drug has been dispensed by the contract pharmacy or a pharmacy in which the enrolled individual or the enrolled individual's representative requested a refill of the drug through ADAP; and
2. The enrolled individual or the enrolled individual's representative claims the dispensed drug was lost, stolen, or damaged.

D. The Department may authorize an enrolled individual to receive more than a 30-day supply of a drug if the enrolled individual:

1. Submits to the Department:
   a. The enrolled individual's name and date of birth;

b. The number of days for which the enrolled individual is requesting a supply of the drug; and
c. A justification for receiving more than a 30-day supply of a drug, such as that:
i. The enrolled individual will be out of Arizona for more than 30 days without changing residency, or
ii. The enrolled individual's health insurance coverage will allow for more than a 30-day supply of a drug; and

2. Is expected to continue to be enrolled in ADAP:
a. Past the number of days for which the enrolled individual is requesting a supply of the drug, and
b. Without needing to submit information or documentation for continuing enrollment, according to R9-6-407(E) or (F), during the time period.

E. For an enrolled individual who has health insurance coverage, the HIV-care provider of the enrolled individual, independently or through the contract pharmacy, may request approval of a drug on the ADAP formulary that is not covered by the enrolled individual's health insurance by submitting to the Department documentation that:
1. The drug is not covered by the enrolled individual's health insurance,
2. A request for health insurance coverage of the drug as a medical exception has been denied by the enrolled individual's health insurance, and
3. An appeal of the denial of the request in subsection (E)(2) has been denied by the enrolled individual's health insurance.

F. The HIV-care provider of an enrolled individual, independently or through the contract pharmacy, may request approval of a drug that is not covered by health insurance and not on the ADAP formulary for the enrolled individual by:
1. Providing to the Department the following information, in a Department-provided format, for each requested drug:
a. The name, business address, email address, and telephone number of the HIV-care provider;
b. The date of the request;
c. The enrolled individual's name and date of birth;
d. The name and any other identifier of the drug;
e. The cost of the drug, if available;
f. The expected duration of the enrolled individual's use of the drug, including whether:
i. Use of the drug is expected to be a one-time occurrence, or
ii. The enrolled individual is expected to need multiple refills of the drug and the expected number of refills;

g. A justification for use of the drug that is not on the ADAP formulary by the enrolled individual;
h. Whether the Department should consider adding the drug to the ADAP formulary and the reasons for the recommendation; and
i. The dated signature of the HIV-care provider;

2. Issuing a valid prescription order for the drug that is not on the ADAP formulary to the contract pharmacy; and
3. Unless the enrolled individual has no health insurance coverage, submitting to the Department the documentation required in subsections (E)(1) through (3).

G. When the Department receives a request under subsection (E) or (F) for an enrolled individual, the Department shall:

1. Review the documents submitted according to subsection (E) or (F), as applicable;
2. Determine whether the information submitted to the Department:
   a. Is complete; and
   b. Substantiates that the enrolled individual's use of the drug is indicated; and
3. Notify, through the contract pharmacy, the following of the Department's decision within five working days after receiving the request:
   a. The enrolled individual or the enrolled individual's representative, and
   b. The enrolled individual's HIV-care provider.

H. If the Department denies a request under subsection (E) or (F) for an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

I. The Department shall only authorize the distribution of drugs that are included on the ADAP formulary or approved for an enrolled individual according to subsection (F).

R9-6-410. Confidentiality

In administering ADAP, the Department shall comply with all applicable federal and state laws relating to confidentiality of information.

Statutory Authority for Rules in 9 A.A.C. 6, Article 4

36-132. Department of health services; functions; contracts

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

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and

public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

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

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

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

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

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

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

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

monies to further applicable scientific research within this state.

C. The department, 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.

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

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.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 2

Amend: **R3-2-202, R3-2-203**

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 2, Article 2

AMEND: R3-2-202, R3-2-203

Summary:

This regular rulemaking from the Arizona Department of Agriculture (Department) seeks to amend two (2) rules in Title 3, Chapter 2, Article 2 regarding Meat and Poultry Inspection. The rulemaking will enact the course of action identified in the Five-Year Review Report (5YRR) approved by the council on August 2, 2022. The course of action identified is to incorporate by reference 9 CFR Chapter III so the Arizona Meat and Inspection program maintains equal requirements with the United States Department of Agriculture (USDA) standards. The Department has satisfied the requirements for incorporation of reference found in A.R.S. § 41-1028.

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 Board states no study was reviewed or relied upon during the course of this rulemaking.

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

The Department's intent in proposing the amendments to A.A.C. R3-2-202 are intended to align with federal regulations for meat and poultry inspection and increase consumer protection. The Department anticipates the rulemaking will result in an overall benefit to the regulated community and the consumer. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking is not expected to result in additional costs for the regulated community. The Department will not incur any additional costs associated with the rulemaking since these programs currently exist and the intent is to only update and improve those processes. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

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?

Given that the rulemaking is not expected to result in additional costs for the regulated community, the Department has determined there is no less intrusive or costly alternative method of achieving the purpose of the rulemaking.

6. What are the economic impacts on stakeholders?

The persons directly affected by the rulemaking are the 30 official establishments and the 54 custom exempt establishments. The proposed rulemaking will not impose any additional costs. The benefits to the regulated parties will include clearer and more concise rule language to reduce confusion and will align with current federal regulations for consistency. Incidentally, the newer federal regulations have eased some of the regulatory burdens.

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

ARS §41-1057(D)(7) states the Council shall not approve the rule unless "[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices."

The Department received no comments and did not make any changes from the proposed rules.

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

The Department indicates that they did not receive any 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?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing

The Department indicated to Council staff that a general permit does not apply under A.R.S. § 41-1037(A)(1) because it is prohibited by federal law under the Federal Meat Inspect Act. The Department has also indicated that a general permit does not apply under A.R.S. § 41-1037(A)(3) because of the requirements found in Arizona Revised Statutes Title 3, Chapter 13 which proscribe specific qualifying conditions prior to the issuance of a license, permit, or certification.

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

A.R.S. §3-2046(B) requires that the Department closely follow the United States Department of Agriculture (USDA) regulations and the Department cannot exceed those requirements. The Department indicates that the rules are not more stringent than federal law because the rules will implement by reference all relevant federal requirements.

11. Conclusion

This regular rulemaking from the Department of Agriculture seeks to amend two (2) rules in Title 3, Chapter 2, Article 2 regarding meat and poultry inspection by incorporating by reference USDA requirements. The Department indicates that the proposed amendments are necessary to comply with the state statute that requires the Department to align with USDA guidelines as closely as possible.

The Department is seeking the standard 60-day delayed effective date.

The Department has satisfied the requirements of incorporation by reference and staff recommends approval.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

postal: 1802 W. Jackson Street, #78 Phoenix, Arizona 85007 ~ physical: 1110 W. Washington Street, Phoenix, AZ 85007
P: (602) 542-0994 F: (602) 542-1004

December 30, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Department of Agriculture, Title 3, Chapter 2, Article 2, Request for Placement on Agenda

Dear Ms. Klein:

The Arizona Department of Agriculture is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and approval. Enclosed with this letter you will find the Arizona Department of Agriculture's (Department) final rulemaking packet for A.A.C. Title 3, Chapter 2, Article 2.

The close of record for the proposed rulemaking occurred on September 4, 2024 following a public hearing for oral comments. During the comment period, the Department did not receive any comments. This rulemaking activity is primarily intended to update an incorporated reference as indicated in the proposed course of action in the August, 2022 five-year rule reveiew report. The coure of action was not completed by July, 2023 as inducated in the report due to the fact that more changes to the federal law were not effective until January, 2024. The rulemaking does not establish any new fees or increase any existing fees. The Department is not requesting an immediate effective date pursuant to A.R.S. § 41-1032. There were no studies conducted related to the rulemaking. No additional employees are necessary to implement and enforce the changes to the rules. The Department received final approval the agency's policy advisor to proceed with final rulemaking on October 17, 2024.

Enclosed with this letter is:

1. A copy of the Notice of Final Rulemaking
2. A copy of the Economic, Small Business, and Consumer Impact Statement
3. A copy of the materials for the incorporated references in the rulemaking.
4. A copy of the Authorizing statutes
5. A copy of the initial and final requests and authorizations from the Governor's Office for approval to conduct rulemaking and proceed with final rulemaking pursuant to EO 2022-01, and the law pursuant to A.R.S. § 41-1039.

Please contact Brian McGrew at (602) 542-3228 or bmcgrew@azda.gov with any questions about this rulemaking.

Sincerely,

Paul E. Brierley
Director

cc: Sheldon Jones, Deputy Director
Rob Smook, Associate Director

NOTICE OF FINAL RULEMAKING

TITLE 3. agriculture

CHAPTER 2. department of agriculture - animal services division

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the governor on:

October 18, 2024

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

R3-2-202	Amend
R3-2-203	Amend

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

Authorizing statute: A.R.S. § 3-107(A)

Implementing statute: A.R.S. § 3-2002, 3-2046, 3-2083

4. The effective date of the rule:

This rule shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is (to be filled in by *Register* editor).

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 the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

n/a

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 the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

n/a

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 2505, Issue Date: August 2, 2024, Issue Number: 31, File number: #R24-142

Notice of Proposed Rulemaking: 30 A.A.R. 2465, Issue Date: August 2, 2024, Issue Number: 31, File number: #R24-137

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

Name:	Brian McGrew
Title:	Program Manager
Physical Address:	Arizona Department of Agriculture
	1110 W. Washington St., Suite 450
	Phoenix, Arizona 85007
Mailing Address:	Arizona Department of Agriculture
	1802 W. Jackson St., #78
	Phoenix, Arizona 85007
Telephone:	(602) 542-3228

Fax:	(602) 542-1004
Email:	bmcgrew@azda.gov
Website:	https://agriculture.az.gov/
Name:	Rick Mann, Program Manager (SME)
Physical Address:	Arizona Department of Agriculture
	1110 W. Washington St., Suite 450
	Phoenix, Arizona 85007
Mailing Address:	Arizona Department of Agriculture
	1802 W. Jackson St., #78
	Phoenix, Arizona 85007
Telephone:	(602) 542-6398
Fax:	(602) 542-4290
E-mail:	rmann@azda.gov

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

On May 10, 2024, the Department received approval from the Natural Resources Policy Advisor, in compliance with A.R.S. § 41-1039(A)(2) by reducing or ameliorating a regulatory burden on the public, while achieving the same regulatory objective; and (A)(6) by complying with an existing state statutory requirement. The main purpose of this rulemaking is to update A.A.C. R3-2-202 to incorporate by reference the most current federal regulations under 9 CFR Chapter III so that meat and poultry inspection in the state can align with federal regulations and maintain the statutory requirement under A.R.S. § 3-2046(B), which is to conform to the rules governing meat inspection of the U.S. Department of Agriculture by referencing existing federal meat inspection regulations, but does not exceed those requirements. The last update to the incorporated reference in A.A.C. R3-2-202 was in 2016 and several changes have occurred since that time. These include:

1. Elimination of Trichinae control regulations. (formerly 9 CFR § 318.10 (a)(1))
2. Eliminating unnecessary requirements for hog carcass cleaning. (formerly 9 CFR § 310.11 & amended portions of § 310.18)
3. Updates to the preparation of uninspected products outside of the hours of inspectional supervision. (as amended 9 CFR §§ 318.12 and 381.152)
4. Modernization of swine slaughter inspection. (9 CFR § 310.18 (c) and (d)
5. Elimination of the requirement to defibrinate livestock blood saved as an edible product. (as amended in 9 CFR § 310.20)
6. Rescission of the condemnation of poultry carcasses affected with any form of Avian Leukosisi Complex. (formerly 9 CFR § 381.82 and as amended in § 381.87)
7. Establishing a uniform time period requirement and clarifying related procedures for the filing of appeals of agency inspection decision actions. (as amended 9 CFR § 500.9)
8. Rescission of dual labeling requirements for certain packages of meat and poultry. (as amended in 9 CFR §§ 317.2 and 381.121)
9. Elimination of the requirement that livestock carcasses be marked "Inspected and Passed" at the time inspection within a slaughter establishment for carcasses to be further processed within the same establishment. (as amended in 9 CFR § 316.9(a))
10. Adding section 9 CFR §§ 530 through 561 to the "EXCEPT" portion of this rule. This section applies to the inspection of fish in the Order Siluriformes (catfish) which the AZDA would defer these inspections to the U.S. Department of Agriculture, Food

Safety and Inspection Service, if requested.

One other minor changes in rule R3-2-203 to modernize application requirements to include an email address that will help with communicating more efficiently and effectively with licensed facilities.

8. 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:

n/a

9. 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 does not diminish any previous authority of a political subdivision of this state.

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

The Department's intent in proposing the amendments to A.A.C. R3-2-202 are intended to align with federal regulations for meat and poultry inspection and increase consumer protection. The Department anticipates the rulemaking will result in an overall benefit to the regulated community and the consumer. The Department has determined the rulemaking will not require any new full-time employees. The rulemaking is not expected to result in additional costs for the regulated community. The Department has determined there is no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will not incur any additional costs associated with the rulemaking since these programs currently exist and the intent is to only update and improve those processes. Therefore, the Department has determined that the benefits of the rulemaking outweigh any costs.

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

n/a

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

n/a

13. 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. § 3-104(F) requires the Arizona Department of Agriculture Advisory Council assist the Director of the Department on all rulemaking activities. The council shall review, advise and make recommendations before they are adopted. During the June 28, 2024 Advisory Council Meeting, council members approved the Department's recommendations to amend rules R3-2-202 and R3-2-203.

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 Department believes it qualifies for an exemption of a general permit for two reasons. 41-1037(A)(1) Federal laws would prohibit the issuance of a general permit under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), and 41-1037(A)(3) it is not technically feasible given the requirements authorized in Title 3, Chapter 13 and in the rules adopted that prescribe the qualifying conditions and requirements prior to the issuance of a license, permit, or certification.

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

Federal laws 7 U.S.C. §§ 1633, 1901-1907 and 21 U.S.C. §§ 451-472 and 601-695 applies to the subject of the rulemaking for the incorporated reference 9 CFR Chapter III in rule R3-2-202. 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:

No analysis was conducted

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

The Federal regulation 9 CFR Chapter III is incorporated in rule R3-2-202 as it relates to the plan for state agencies.

15. 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:

n/a

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised ~~January 1, 2016~~ January 1, 2024, as amended by ~~80 FR 75590-01(December 2, 2015)~~ 88 FR 55913 (August 17, 2023), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 530 through 561, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at www.gpo.gov/fdsys.

R3-2-203. Licenses; Registration; Records

A. No Change

1. No Change
    a. No Change
    b. No Change
        i. No Change
        ii. No Change
2. No Change
    a. No Change
    b. No Change
    c. No Change
    d. No Change
    e. No Change
    f. No Change
    g. No Change

B. Applications for a license or registration pursuant to A.R.S. § 3-2081(A), shall be made on forms provided by the Department and shall contain the following:

1. No change
2. The business name, mailing address, email address, telephone number, and Social Security number of the applicant;
3. No change

C. No Change

D. No Change

1. No Change
2. No Change
3. No Change

E. No Change

1. No Change
2. No Change
3. No Change
4. No Change
5. No Change
6. No Change
7. No Change
8. No Change

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

ARTICLE 2

Summary

The objective of the rules in Article 2 is to prescribe standards for meat and poultry processing facilitates and align with federal regulations under 9 CFR Chapter III the inspection of these facilities. The Article also prescribes the licensing requirements to obtain a license as an official establishment or as an exempt establishment.

1. Identification of the proposed rulemaking.

The main purpose of this rulemaking is to update A.A.C. R3-2-202 to incorporate by reference the most current federal regulations under 9 CFR Chapter III so that meat and poultry inspection in the state can align with federal regulations and maintain the statutory requirement under A.R.S. § 3-2046(B), which is to conform to the rules governing meat inspection of the U.S. Department of Agriculture by referencing existing federal meat inspection regulations, but does not exceed those requirements. The last update to the incorporated reference in A.A.C. R3-2-202 was in 2016 and several changes have occurred since that time. These include:

1. Elimination of Trichinae control regulations. (formerly 9 CFR § 318.10 (a)(1))
2. Eliminating unnecessary requirements for hog carcass cleaning. (formerly 9 CFR § 310.11 & amended portions of § 310.18)
3. Updates to the preparation of uninspected products outside of the hours of inspectional supervision. (as amended 9 CFR §§ 318.12 and 381.152)
4. Modernization of swine slaughter inspection. (9 CFR § 310.18 (c) and (d)
5. Elimination of the requirement to defibrinate livestock blood saved as an edible product. (as amended in 9 CFR § 310.20)
6. Rescission of the condemnation of poultry carcasses affected with any form of Avian Leukosisi Complex. (formerly 9 CFR § 381.82 and as amended in § 381.87)
7. Establishing a uniform time period requirement and clarifying related procedures for the filing of appeals of agency inspection decision actions. (as amended 9 CFR § 500.9)
8. Rescission of dual labeling requirements for certain packages of meat and poultry. (as amended in 9 CFR §§ 317.2 and 381.121)

9. Elimination of the requirement that livestock carcasses be marked “Inspected and Passed” at the time inspection within a slaughter establishment for carcasses to be further processed within the same establishment. (as amended in 9 CFR § 316.9(a))
10. Adding section 9 CFR §§ 530 through 561 to the "EXCEPT" portion of this rule. This section applies to the inspection of fish in the Order Siluriformes (catfish) which the AZDA would defer these inspections to the U.S. Department of Agriculture, Food Safety and Inspection Service, if requested.

One other minor changes in rule R3-2-203 to modernize application requirements to include an email address that will help with communicating more efficiently and effectively with licensed facilities.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

The persons directly affected by the rulemaking are the 30 official establishments and the 54 custom exempt establishments. The proposed rulemaking will not impose any additional costs. The benefits to the regulated parties will include clearer and more concise rule language to reduce confusion and will align with current federal regulations for consistency. Incidentally, the newer federal regulations have eased some of the regulatory burdens.

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 rule making. 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 effect of the rulemaking will not require any additional full-time employees to the Department and there will be no additional costs for the implementation of the rulemaking since the Department has already established a framework for the programs affected by the rulemaking.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

There are no identified costs or benefits to any political subdivision of the state.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

The rulemaking is not expected to effect revenues or payrolls for the regulated community. Businesses will benefit from the proposed changes throughout the rulemaking that align with current federal regulations, and the rulemaking is intended to remove inconsistencies and reduce the overall regulatory burden.

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 rule making.

It is not expected that employment in businesses, agencies, or political subdivisions will be directly affected by the rulemaking.

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

(a) An identification of the small businesses subject to the proposed rule making.

Small businesses could include a majority of the official and custom exempt meat and poultry processing facilities since most operate with fewer than 100 employees.

(b) The administrative and other costs required for compliance with the proposed rule making.

It is expected that there will not be any additional administrative or other costs required for compliance associated 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.

The Department finds that the use of any method in section 41-1035 is not feasible since establishing less stringent compliance or reporting requirements; establishing less stringent schedules or deadlines; consolidating compliance or reporting requirements; or exempting a small business would not comply with federal law. The use of performance standards is not applicable to this rulemaking.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

The proposed rulemaking does not infer any costs or benefits to private persons or consumers.

6. A statement of the probable effect on state revenues.

The proposed rulemaking will not have an effect on state revenues since there is no change to the certification or licensing fees; and there is no increase to the penalties for program violations.

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

The Department finds there are no less intrusive or less costly alternatives to the proposed rulemaking. The substance of the rules is dictated, to a large extent, by the federal government.

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.

No data was produced from any studies or research for the rulemaking.

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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

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, 2024 through September 30, 2024

Questions about these rules? Contact:

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The release of this Chapter in Supp. 24-3 replaces Supp. 24-1, 1-58 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. 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 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, 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.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

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TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

Authorizing statute: A.R.S. § 3-107(A)(1)

Supp. 24-3

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Chapter 2, Articles 1 through 7 renumbered from Title 3, Chapter 9, Articles 1 through 7; Article 8, consisting of Sections R3-2-801 through R3-2-808, renumbered from Title 3, Chapter 5, Article 1, Sections R3-5-01 through R3-5-08; Article 9, consisting of Sections R3-2-901 through R3-2-909 renumbered from Title 3, Chapter 6, Article 1, Sections R3-6-101 through R3-6-109 (Supp. 91-4).

Article 1 consisting of Sections R3-9-101 through R3-9-103; Article 2 consisting of Sections R3-9-201 through R3-9-208; Article 3 consisting of Sections R3-9-301 and R3-9-302; Article 4 consisting of Sections R3-9-401 through R3-9-409; Article 5 consisting of Sections R3-9-501 through R3-9-504; Article 6 consisting of Sections R3-9-601 through R3-9-620; Article 7 consisting of Sections R3-9-701 and R3-9-702 adopted effective August 19, 1983.

Former Article 1 consisting of Sections R3-9-01 through R3-9-11; Article 2 consisting of Sections R3-9-16 through R3-9-26; Article 3 consisting of Sections R3-9-22 through R3-9-35; Article 4 consisting of Sections R3-9-46 through R3-9-48 repealed effective August 19, 1983.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R3-2-101, adopted effective May 7, 1997 (Supp. 97-2).

Article 1, consisting of Sections R3-2-101 through R3-2-109, recodified to Article 11, Sections R3-2-1101 through R3-2-1109 (Supp. 97-1).

Article 1, consisting of Sections R3-2-101 through R3-2-109, adopted effective September 11, 1996 (Supp. 96-3).

Article 1, consisting of Sections R3-2-101 through R3-2-103, renumbered from R3-9-101 through R3-9-103 (Supp. 91-4).

ARTICLE 2. MEAT AND POULTRY INSPECTION

Article 2, consisting of Sections R3-2-201 through R3-2-208, renumbered from Sections R3-9-201 through R3-9-208 (Supp. 91-4).

ARTICLE 3. FEEDING OF ANIMALS

Article 3, consisting of Sections R3-2-301 and R3-2-302, renumbered from R3-9-301 and R3-9-302 (Supp. 91-4).

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

Article 4, consisting of Sections R3-2-401 through R3-2-409 renumbered from R3-9-401 through R3-9-409 (Supp. 91-4).

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

Article 5, consisting of Sections R3-2-501 and R3-2-504, renumbered from R3-9-501 and R3-9-504 (Supp. 91-4).

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

Article 6, consisting of Sections R3-2-601 and R3-2-620, renumbered from R3-9-601 and R3-9-620 (Supp. 91-4).

ARTICLE 7. LIVESTOCK INSPECTION

Article 7, consisting of Sections R3-2-701 and R3-2-703, renumbered from R3-9-701 and R3-9-703 (Supp. 91-4).

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

(Authority: A.R.S. § 3-601 et seq.)

Article 8, consisting of Sections R3-2-801 through R3-2-808, renumbered from R3-5-01 through R3-5-08 (Supp. 91-4).

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

(Authority: A.R.S. § 3-701 et seq.)

Article 9, consisting of Sections R3-2-901 through R3-2-909 renumbered from R3-6-101 through R3-6-109 (Supp. 91-4).

ARTICLE 10. AQUACULTURE

(Authority: A.R.S. § 3-2901 et seq.)

Article 10, consisting of Sections R3-2-1001 through R3-2-1010, adopted effective May 3, 1993 (Supp. 93-2).

ARTICLE 11. VOLUNTARY EGG GRADING PROGRAM

Article 11, consisting of Sections R3-2-1101 through R3-2-1125, made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Article 11, consisting of Sections R3-2-1101 through R3-2-1109, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

Article 11, consisting of Sections R3-2-1101 through R3-2-1109, recodified from Article 1, Sections R3-2-101 through R3-2-109 (Supp. 97-1).

ARTICLE 12. ACQUISITION AND USE OF SODIUM PENTOBARBITAL AND DERIVATIVES BY UNLICENSED INDIVIDUALS IN ANIMAL SHELTERS

Article 12, consisting of Sections R3-2-1201 through R3-2-1203, made by final rulemaking at 29 A.A.R. 1327 (June 9, 2023), effective July 8, 2023 (Supp. 23-2).

ARTICLE 1. GENERAL PROVISIONS

R3-2-101. Definitions

In addition to the definitions provided in A.R.S. §§ 3-1201, 3-1451, and 3-1771, the following terms apply to this Chapter:

"Accredited veterinarian" means a veterinarian approved by the State Veterinarian and USDA Area Veterinarian In Charge (A.V.I.C.) to perform functions required by cooperative State-Federal animal disease control and eradication programs.

"Animal" means livestock, bison, dogs, cats, rabbits, rodents, aquatic animals, game animals, furbearing and wildlife mammals, poultry and psittacines.

"APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

"Beef cattle" means all cattle other than dairy cattle.

"Certificate of Veterinary Inspection" or "CVI" means a legible record that is issued by a VS animal health official, state animal health official, or accredited veterinarian at the point of origin of a shipment of animals, conforms to the requirements of R3-2-606, and is written on a form approved by the chief animal health official of the state of origin or an equivalent form of the USDA attesting that the animal described has been inspected and found to meet the Arizona entry requirements.

"Dairy cattle" means any domesticated bovine dairy animal or crosses of the Bos genus that show at least 50 percent phenotypic characteristics of a dairy breed, including; Ayrshire, Brown Swiss, Canadienne, Dutch Belt, Holstein, Jersey, Guernsey, Kerry, Milking Devon, Milking Shorthorn, or Norwegian Red.

"Designated feedlot" means a feedlot containing a confined drylot area under state quarantine that is approved and authorized by the State Veterinarian; contains a restricted feeding pen; and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.

"Entry permit number" or "Import permit number" means a serialized number issued by the State Veterinarian's Office that conforms to the requirements of this chapter and allows the regulated movement of certain animals into Arizona.

"Equine Infectious Anemia" or "EIA" means an infectious, noncontagious, and potentially fatal viral disease of members of equine caused by a RNA virus classified in the Lentivirus genus, family Retroviridae.

"Official Identification" as defined in 9 CFR 71.19 (b) as revised on January 1, 2018 for swine; 9 CFR 79.2 (a)(2) as revised on January 1, 2018 for sheep and goats; and 9 CFR 86.4 as revised on January 1, 2018 for cattle.

"Poultry" means any bird except psittacine, whether live or dead, including but not limited to chickens, turkeys, ducks, geese, guineas, ratites, squabs, and any exotic birds not regulated as restricted wildlife by the Arizona Game and Fish Department. The definition "poultry" also includes hatching eggs, which are fertilized eggs produced by breeding poultry.

"Psittacine" means a bird belonging to the family Psittacidae, which includes macaws, parakeets, and parrots.

"USDA" means the United States Department of Agriculture.

"VS" means the Veterinary Services branch of APHIS.

Historical Note

Reserved Section R3-2-101 renumbered from R3-9-101 (Supp. 91-4). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-101 recodified to R3-2-1101 (Supp. 97-1). New Section adopted effective May 7, 1997 (Supp. 97-2). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of calendar days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department sends the notice of missing information to the applicant until the date the Department receives the information.
3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Historical Note

Reserved Section R3-2-102 renumbered from R3-9-102 (Supp. 91-4). New Section adopted effective September

11, 1996 (Supp. 96-3). Section R3-2-102 recodified to R3-2-1102 (Supp. 97-1). New Section R3-2-102 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-103. Recodified

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). R3-2-103 renumbered from Section R3-9-103 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-103 recodified to R3-2-1103 (Supp. 97-1).

R3-2-104. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-104 recodified to R3-2-1104 (Supp. 97-1).

R3-2-105. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-105 recodified to R3-2-1105 (Supp. 97-1).

R3-2-106. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-106 recodified to R3-2-1106 (Supp. 97-1).

R3-2-107. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-107 recodified to R3-2-1107 (Supp. 97-1).

R3-2-108. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-108 recodified to R3-2-1108 (Supp. 97-1).

R3-2-109. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-109 recodified to R3-2-1109 (Supp. 97-1).

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
MEAT AND POULTRY INSPECTION						
License to Slaughter	A.R.S. §§ 3-2002 & 3-2003 R3-2-208	14	14	30	14	44
Transfer of license without fee	A.R.S. § 3-2009	14	14	30	5	44
State Meat Inspection Service	A.R.S. § 3-2047	14	14	30	14	44
Sale or Exchange of Meat or Poultry	A.R.S. § 3-2081 R3-2-208	14	14	30	14	44
Rendering Facility Certification	A.R.S. § 3-2081	14	14	30	14	44
Transfer of License	A.R.S. § 3-2086	14	14	30	5	44
Official Slaughter Meat Licenses	A.R.S. § 3-2122 R3-2-208	14	14	30	14	44
FEEDING OF ANIMALS						
Feed Lot License	A.R.S. § 3-1452	14	14	60	14	74
Permit to Feed Garbage to Swine	A.R.S. § 3-2664	14	14	60	14	74
DAIRY PRODUCTS AND CONTROL						
Milk Distributing Plant	A.R.S. § 3-607					
New		14	14	14	14	28
Renewal		14	14	14	14	28
Milk Processing Plant	A.R.S. § 3-607					
New		14	14	14	14	28
Renewal		14	14	14	14	28
Plant Licensing	A.R.S. § 3-665					
New		14	14	14	14	28
Renewal		14	14	14	14	28
Request to market a product as a milk product	A.R.S. § 601.01	14	14	14	14	28
Tester License	A.R.S. § 3-619	7	7	7	7	14
Trade Product Label	A.R.S. § 3-667	14	14	30	30	44

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
LIVESTOCK INSPECTION						
Equine Trader Permit	A.R.S. § 3-1348	7	7	7	7	14
Ownership and Hauling Certificate for Equines	A.R.S. §§ 3-1344 & 3-1345	14	14	14	14	28
EGG PRODUCTS AND CONTROL						
Annual Licensing	A.R.S. § 3-714	10	10	10	10	20
AQUACULTURE						
Aquaculture Facility	A.R.S. § 3-2907 R3-2-1004	14	14	30	14	44
Fee Fishing Facility	R3-2-1005	14	14	30	14	44
Processor	R3-2-1006	14	14	30	14	44
Transporter	R3-2-1007	14	14	30	14	44
Special Licenses	A.R.S. § 3-2908	14	14	30	14	44

Historical Note
Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-201. Definitions
In addition to the definitions provided in A.R.S. §§ 3-101 and 3-2001 and 9 CFR 301.2 and 9 CFR 381.1, which are incorporated by reference in R3-2-202, the following terms apply to this Article:

1. "Animal" means any steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ratite, or poultry.
2. "Dead animal" means an animal that died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. "Inedible meat" means:
   a. Meat or meat food product from an animal that died by slaughter or was processed in an inspected slaughterhouse, but which an inspector did not pass as fit for human consumption; or
   b. Meat condemned by a federal or state inspector.
4. "Rendering" means the conversion of packinghouse waste or dead animal carcasses and parts into industrial fat, oil, or other product unfit for human consumption.

Historical Note
Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-201 renumbered from Section R3-9-201 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 10 A.A.R. 2661, effective August 7, 2004 (Supp. 04-2).

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards
All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2016, as amended by 80 FR 75590-01 (December 2, 2015), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at www.gpo.gov/fdsys.

Historical Note
Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-202 renumbered from Section R3-9-202 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 465, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1971, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 15 A.A.R. 1890, effective October 21, 2009 for 180 days (Supp. 09-4). Emergency expired; Section amended by final rulemaking at 16 A.A.R. 351, effective April 3, 2010 (Supp. 10-1). Amended by emergency rulemaking at 19 A.A.R. 150, effective January 9, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 1789, effective July 9, 2013 (Supp. 13-3). Amended by final rulemaking at 22 A.A.R. 2167, effective October 2, 2016 (Supp. 16-3).

R3-2-203. Licenses; Registration; Records
A. Any person operating a business in any of the following categories shall obtain the appropriate license from the Department.

1. Types of slaughter licenses.
   a. Official slaughter – the slaughtering of animals in a slaughterhouse for sale for human consumption.
   b. Exempt slaughter.
      i. Exempt non-mobile slaughter – the slaughtering or dressing of an animal in a stationary building for human consumption, that is not sold or offered for sale.
      ii. Exempt mobile slaughter – the slaughtering or dressing of an animal for human consumption

by using a mobile structure on the property of the animal's owner, that is not sold or offered for sale.

2. Types of meat licenses.
   a. Broker – any person, firm or corporation engaged in buying or selling carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments. A broker negotiates purchases or sales of these products other than for the broker's own account, as an employee of another person, and is paid a commission.
   b. Exempt – any person, firm, or corporation engaged in processing meat or poultry products without meat inspection, for an individual owner of meat that is not for sale.
   c. Distributor – any person, firm, or corporation engaged in receiving carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments and storing or distributing these products to commercial outlets, processors, or individuals. A distributor does not process any of these products.
   d. Jobber – any person, firm, or corporation with an established place of business that buys meat or poultry food products and offers the products for sale to someone other than the end-use consumer.
   e. Pet food manufacturer – any person, firm, or corporation engaged in manufacturing animal food from meat or poultry unfit for human consumption.
   f. Processor – any person, firm, or corporation that changes meat or poultry food products by cutting, mixing, blending, canning, curing or otherwise preparing meat or meat food products wholesale for human consumption.
   g. Renderer – any person, firm, or corporation that renders and tallows and any person, firm, or corporation engaged commercially in the hide, hair, or pelt removal, cutting up, or rendering of animals.

B. Applications for a license or registration pursuant to A.R.S. § 3-2081(A), shall be made on forms provided by the Department and shall contain the following:
1. The name of the applicant and the applicant's partners, officers or directors of the business, if any;
2. The business name, mailing address, telephone number, and Social Security number of the applicant;
3. The exact location of the business, if different from subsection (B)(2).

C. All persons licensed or registered under this Section, and all other persons described in A.R.S. § 3-2081, shall maintain the records required under A.R.S. § 3-2081 for a minimum of one year. In addition, all registered dead animal haulers, licensed rendering and tallow plants, and pet food manufacturing plants shall prepare and submit the reports required under A.R.S. § 3-2695 and shall include copies of those reports as part of records maintained under this Section and A.R.S. § 3-2081.

D. During fiscal year 2024, the fee to obtain or renew a license to slaughter is:
1. Not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: $250.
2. For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: $300.
3. For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: $450.

E. During fiscal year 2024, the fee to obtain or renew a meat license is:
1. For a broker, $450.
2. For exempt processing, $300.
3. For a distributor, $500 for a large distributor (more than $100,000 in sales per calendar year) and $150 for a small distributor (not to exceed $100,000 in sales per calendar year).
4. For a jobber, $450.
5. For a pet food manufacturer, $300.
6. For a processor, $300.
7. For meat storage, $450.
8. For transportation, $300.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-208 renumbered from Section R3-9-208 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-203 renumbered to R3-2-208; new Section R3-2-203 renumbered from Section R3-2-208 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2017 (August 12, 2022), effective September 24, 2022 (Supp. 22-3). Amended by exempt rulemaking at 29 A.A.R. 3483 (November 3, 2023), effective October 30, 2023 (Supp. 23-4).

R3-2-204. Official Slaughter Establishment

In addition to the requirements in A.R.S. § 3-2051, the following shall be provided when slaughtering cattle, calves, sheep, and hogs:
1. Cattle.
   a. A metal knocking box or concrete box with metal door to confine the animals prior to stunning;
   b. A separately drained, dry landing area at least five feet wide in front of the knocking box;
   c. A curbed-in bleeding area at least eight feet wide and seven feet long, located so that blood will not splash upon stunned animals lying in the dry landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide;
   d. A separately drained area at least five feet from the curbed-in bleeding area to the siding bed;
   e. A distance of at least 14 feet from the vertical of the dropoff to the vertical of the hoist where carcasses

are eviscerated. For multiple-bed plants, this distance shall be increased to 16 feet;

f. A distance of at least 14 feet between the vertical of the hoist where carcasses are eviscerated and the header rail leading to the cooler. This distance may be shortened when a single rail hang-off is used;

g. A distance of at least three feet from the header rail to the adjacent wall;

h. A bleeding rail with its top at least 16 feet above the floor or a traveling hoist on an I-beam which will provide an equivalent distance of the carcass from the floor;

i. Floor space for a head-flushing cabinet and head inspection rack with removable hooks;

j. When hides are dropped to a room below, a hide chute near the point where hides are removed from the carcasses. The chute shall have a vented hood with a self-closing, push-in door. The vent shall be approximately 10 inches in diameter and extend to a point above the roof. Additional chutes, which meet the requirements of this subsection, for inedible and condemned materials shall be provided separate from the hide chutes;

k. A two-level viscera inspection truck for evisceration, except when a moving top viscera inspection table is used;

l. An area for washing and shrouding carcasses which shall be curbed and sloped to a separate drain or have a slope of approximately 1/2 inch to the foot leading to a separate drain;

m. Dressing rails and cooler rails at least 11 feet in height.

2. Calves and sheep.

a. A bleeding rail with its top approximately 11 feet from the floor. The floor of the bleeding area shall be curbed and separately drained;

b. Dressing and cooler rails of such height as to provide a clearance of at least eight inches from the carcasses to the floor. Calves which are of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transferred manually and unaided to the inspection stand, shall be skinned and eviscerated as cattle;

c. Facilities for washing hides of calves before any incision is made (except the sticking wound) when carcasses are dressed hide on. The heads of calves and veal slaughtered by the Kosher method shall be skinned prior to the washing of the carcasses;

d. Facilities for flushing, washing, and inspecting calf heads, including head-flushing cabinet and head inspection rack with removal calf loops;

e. Facilities for the inspection of the viscera. A hoppered metal stand shall be provided which accommodates two removal inspection pans. One inspection pan is for the thoracic viscera; the other is for the abdominal viscera. The pans shall have perforated bottoms and handles or hand holes for removal. A sterilizing receptacle shall be provided for sterilization of contaminated pans;

f. Facilities for washing sheep carcasses after removal of the pelt. Calves and sheep shall be washed again after they have been eviscerated.

3. Hogs.

a. Facilities for bleeding hogs in a hanging position, over a separately drained, curbed-in bleeding area;

b. A scalding vat and gambreling table, including the platforms, of metal construction;

c. A shaving rail to assure that carcasses are cleaned;

d. A hoppered metal stand for the inspection of viscera. A sterilizing receptacle shall be provided at a convenient location for the sterilization of contaminated pans;

e. Dressing and cooler rails at least nine feet high or of such height as to provide a clearance of at least eight inches between the lowest point of the carcass, or head if left attached, and the floor.

4. Coolers. A chill cooler and separate holding coolers may be provided or both may be combined in one room. The chill cooler shall have floors of concrete sloped to a drain. The walls shall be smooth, light colored, impervious, and the room shall be sealed. The other coolers shall have floors of concrete; the walls shall be smooth, free of cracks, light colored, impervious, and the room shall be sealed. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant metal. Rails shall be spaced at least two feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact with the carcasses. Header rails shall be three feet from the walls. When overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them and the pans connected to the drainage system. If wall coils are installed, a drip gutter of impervious material and connected with the drainage system shall be installed beneath the coils. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area shall be separately drained.

5. Other edible products departments.

a. Floors, walls, and ceilings in the various edible products departments of the plant shall be constructed of material that can be readily kept clean. Wooden structures and equipment shall be kept at a minimum. Floors requiring drainage shall be constructed of dense concrete or floor brick laid on a concrete base. The interior walls and, where practical, ceiling surfaces shall be smooth and flat. Walls shall be constructed of glazed tile, smooth cement plaster, or other USDA-approved impervious material. Walls shall be free of cracks and crevices, and, where brick or tile is used, the mortar joints shall be flush with the surface of the walls. Walls shall be light colored.

b. The floors of the plant shall be well-drained; a slope of not less than 1/4 inch to the foot to drainage inlets is required. The floors shall be smooth, impervious, and in good repair; they shall be free from cracks and depressions which could hold floor liquids. Wooden floors are not permitted. Junctions of floors and walls shall be coved.

c. Walls, ceilings, beams, and hangers shall be cleaned. Rails may be oiled instead of painted. Rust and scale shall be removed from hangers and meat trolleys. Smooth Portland cement plaster walls shall not be painted.

6. Hide room. The floor of the hide room, if provided, shall be of concrete and drained. Walls shall be smooth and impervious to at least the highest point of the hide pile. The hide room shall not connect with the slaughtering

department except for one opening which shall be equipped with a tight-fitting, self-closing door. The hide room shall not connect with any other room in which edible products are stored, processed, or handled.

7. Disposal of blood. When blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises or blown to the blood drier in a manner that will not mask odors or create a harborage for pests.
8. Other inedible products departments.
    a. An inedible products department, completely separate and apart from edible products departments, shall be provided. Walls shall be of smooth, finished, Portland cement plaster, glazed tile, or other USDA-approved material impervious to moisture. Floors shall be constructed of dense concrete or floor tile, sloped to drain. Hot and cold water connections shall be provided. With the exception of one opening to the slaughtering department, there shall be no openings between an inedible products department and an edible products department. This one opening shall be approximately five feet in width to allow the free passage of materials and shall be equipped with a close-fitting, self-closing door of solid construction. This door shall be kept closed at all times, except when in actual use, to prevent the entrance of undesirable odors to the slaughtering department. The area at the loading dock shall be paved, drained, and of sufficient size to accommodate the largest truck used. If inedible offal is stored in an edible offal room, the room is classed as an inedible products department. Paunches may be opened in the slaughtering department only when a hydraulic mechanically operated paunch lift table is provided and used for this purpose. Otherwise, the paunches shall be opened in the inedible offal rooms.
    b. Requests for permission for rendering of shop scraps and outside dead animals shall be made to the inspector who shall grant or deny the request pursuant to Article 2.
9. Pens.
    a. Holding pens shall be surfaced with an impervious material, sloped to drains. A curb shall be installed around the outside of the pens to prevent the wash from escaping. Water under pressure shall be available for washing out the pens. Feeding pens shall be at least 300 feet from the plant and shall not be located in front of the plant.
    b. Holding and shackling pens shall be located outside of, or separated from, the slaughtering department.
10. Drainage
    a. Floors which require flushing during operations shall have sloped floor drains to carry off the floor drainage. Each floor drain shall be equipped with a deep-seal trap; the drainage lines shall be vented to the outside in accordance with local plumbing codes. In no case shall a drain line be less than four inches in diameter.
    b. Sewage may be disposed of into a municipal sewer system, if permitted by local ordinance, or it may be disposed of into a stream or other similar body of water, provided that:
        i. This method is acceptable to local health authorities having jurisdiction over sewage disposal, and
        ii. The flow of the stream or other body of water is sufficient to carry the sewage away from the plant at all seasons of the year. When cesspools are used, they shall be of sufficient size to receive the sewage from the plant at all times; they shall be so constructed that they do not create a nuisance by breeding flies or other insects.
    c. Grease recovery basins shall not mask odors or create a harborage for pests.
11. Equipment and utensils.
    a. Equipment shall be constructed of metal and shall be so constructed that it can be easily cleaned. Cutting boards may be of hard wood or synthetic material, but equipment, such as the framework of boning or cutting tables, scalding vats, offal racks and trees, product storage racks, and product trucks shall be of metal construction. Rusty or worn-out equipment shall be replaced.
    b. All equipment shall be thoroughly cleaned following each day's operations. The use of a clear, colorless, odorless, tasteless, edible mineral oil may be used on metal equipment, such as choppers, grinders, mixers, tables, meat trucks, offal racks, hooks, and trolleys. Scale shall not be permitted to accumulate on metal equipment.
    c. Sterilizing receptacles equipped with drains to permit draining and cleaning shall be placed at convenient locations in the slaughtering department for the cleaning and sterilization of contaminated tools and equipment. Water wasting from equipment shall not flow across the floor.
    d. Shovels used for transferring ice or other edible materials from one container to another shall not touch the floor.
12. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to assure the absence of dust, masking odors, or steam vapors. Points where inspection is conducted may require special lighting. The glass area shall be at least 1/4 of the floor area in all nonrefrigerated work rooms. To assure adequate lighting at all times and at all places, natural lighting must be supplemented by well-distributed artificial lighting.
13. Water supply, wash basins, sterilizing facilities.
    a. Hot and cold running water, under pressure, shall be available at all parts of the establishment and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.
    b. Foot-pedal operated wash basins shall be placed in or near dressing rooms. These wash basins shall be equipped with running hot and cold water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The

drainage outlet shall lead directly into the sewage lines. Soap and towels, and a receptacle for dirty paper towels or other trash, shall be convenient to the wash basin.

c. One or more wash basins shall be located in the slaughtering department, and one or more in the sausage manufacturing room and at any other place in the establishment essential to ensure cleanliness of all persons handling products. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.

d. Water for sterilizing purposes shall be maintained at a temperature of at least 180° F. One or more sterilizing receptacles of rust-resisting, impervious material shall be placed at convenient locations in the slaughtering department for the sterilization of all implements that have been contaminated or used on a diseased carcass or part of a diseased carcass. The sterilizer shall be equipped with a cold water and steam line, or other means to maintain water at a temperature of at least 180° F during slaughtering operations. The sterilizer shall contain a drain so that water may be completely drained out for daily cleaning. Boilers and water heaters shall not be located in the slaughtering department or in any edible products department. To prevent possible back siphonage, vacuum breakers shall be provided on all steam and water lines when open ends are submerged or connected to equipment.

14. Protection against flies, rodents, or other vermin.

a. Plants must be kept free of flies, rats, mice, roaches, and other pests or vermin. The plant shall be constructed to prevent entrance of rodents to the premises and to eliminate their breeding places from the surrounding areas and in the establishment. Construction of the plant shall be such as to eliminate roach and other insect harbors. Windows, doors, and other openings to the plant shall be provided with insect screens, or other measures to prevent entrance of flies or other insects. The screens shall be kept in good repair. Sprays containing residual-acting chemicals shall not be used in edible products departments.

b. Animal-handling facilities such as stock pens and runways shall be cleaned as often as necessary and the manure or other waste materials removed shall not be permitted to accumulate at or near the plant.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-204 renumbered from Section R3-9-204 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

R3-2-205. Expired

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-205 renumbered from Section R3-9-205 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

R3-2-206. Purchase, Sale, Collection, Transportation, Disposition, and Use of Meat or Meat Food Products; Dead Animals; Animal Bone, Animal Fat, Animal Offal

A. A person shall not buy, sell, offer for sale, store, transport, receive, or collect any meat or meat food product except as provided in this subsection.

1. Any of the following meat or meat food products may be bought, sold, or offered for sale as animal food and may be stored, transported, received, or collected anywhere within the state:
   a. Any meat or meat food product that is processed in an animal food manufacturing plant licensed by the Department;
   b. Any meat or meat food product that comes from an animal that died by slaughter or is approved or passed for animal food by either state or federal meat inspectors;
   c. Any meat or meat food product that is thoroughly cooked at a minimum temperature of 180° F for 30 minutes and is certified by a state or a federal meat inspector having jurisdiction at the place of processing.
2. A carcass with the hide, hair, or pelt still on the carcass may be bought, sold, offered for sale, collected and transported to or received by the following only:
   a. A rendering or tallow plant;
   b. A state or county diagnostic laboratory, a veterinarian's clinic, or crematory;
   c. An animal food manufacturing plant;
   d. A landfill regulated by the Arizona Department of Environmental Quality;
   e. An out-of-state landfill regulated by that state's landfill regulatory authority; or
   f. A landfill located on a Native American reservation that is regulated by equivalent standards to those prescribed by the Arizona Department of Environmental Quality.
3. Any meat or meat food product described in subsection (A)(1) or a carcass with the hide, hair, or pelt still on the carcass from an official state or federal slaughter establishment shall be denatured with a denaturant that will not leave a toxic residue and is removable when steam-distilled at atmospheric pressure.
4. Any meat or meat food product that has been condemned by state or federal meat inspectors shall be treated as provided in 9 CFR 314.3, which has been incorporated by reference in R3-2-202, and may be disposed of as provided in that rule or may be collected and transported to or received by a rendering or tallow plant or a state or county diagnostic laboratory or crematory.

B. A person engaged commercially in the collection or transportation of dead animal carcasses or inedible meat shall register with the Department as a dead animal hauler as prescribed in R3-2-203(B) and shall maintain and keep all records for the time required by R3-2-203(C).

C. A vehicle or other means of conveyance used to transport a dead animal carcass or inedible meat shall be:

1. Leak-proof,
2. Constructed of impervious materials that permit thorough cleaning and sanitizing,
3. Equipped to control insects and odors and prevent the spread of disease, and

4. Comply with the Department of Environmental Quality vehicle requirements prescribed in R18-13-310(A) and (B).

D. Except as provided in subsection (E), a dead animal carcass may be rendered or made into animal food only at a licensed rendering or animal food manufacturing plant as prescribed in A.R.S. § 3-2088 and this Article.

E. Dead animals diagnosed with anthrax or an animal disease foreign to the United States shall be handled as directed by the State Veterinarian.

F. Discarded animal bone, animal fat, and animal offal generated by a wholesale food manufacturer shall be transported to and received by only a:
1. Licensed rendering plant, or
2. Landfill, as prescribed in subsections (A)(2)(d), (A)(2)(e), and (A)(2)(f).

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-206 renumbered from Section R3-9-206 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Citation in subsection (B) corrected to R3-2-203(C) from R3-2-208(C) under R1-1-109(C) (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3015, effective July 10, 2002 (Supp. 02-3).

R3-2-207. Meat from Dead Animals Processed and Decharacterized for Use as Animal Food

A. The following are minimum requirements for animal food manufacturing plants:
1. Hot and cold water shall be provided with facilities for its distribution in the plant which shall conform with the minimum requirements of the state Department of Health Services. The hot water shall be at least 180° F and shall be used for the cleaning of equipment, floors, and walls.
2. There shall be a drainage and plumbing system and a sewage disposal system that will not serve as a breeding place for flies, constitute a hazard, or endanger public health. Both systems shall meet the minimum requirements of the state Department of Health Services.
3. The floors, walls, ceilings, partitions, posts, doors, and other parts of all structures shall be of materials, construction, and finish that are capable of being thoroughly cleaned. The floors shall be tile, cement or other material impervious to water and shall have sufficient drainage to preclude stagnant accumulations of moisture.
4. All outside windows and doors shall be screened.
5. All rooms shall have natural or artificial lighting and well-distributed ventilation sufficient to prevent uncontrolled mold growth and filth or bacteria that may endanger health.
6. The plant shall be kept free from flies, rats, mice, and other vermin. Dogs and cats shall be excluded from the plants.
7. Tables, benches, and other equipment shall be provided so that processing can be performed free from filth or bacteria that may endanger health.
8. Each plant shall provide toilets, wash basins, towels, hot and cold running water, and soap for the employees with separate facilities when both sexes are employed. Toilets and wash basins shall be kept free from filth or bacteria that may endanger health. The rooms in which the toilet facilities are located shall be ventilated and shall be separated from the rooms in which the animal food is manufactured.
9. Coolers shall be maintained below 40^{o} F. Freezers shall be maintained below 10^{o} F.

B. Decharacterizing or denaturant agents: The following USDA-approved denaturant agents may be used: Charcoal (finely powdered) with a minimum l lb. per 100 lbs. meat, F-D & C Blue 1, F-D & C Blue 2, F-D & C Green 3, or liquid charcoal.
1. In addition to the application of the denaturing agents listed, meat or meat products shall be identified with the following information:
   a. The kind of animal,
   b. The following phrases:
      i. For pet food only from dead animals,
      ii. Denatured with _____,
   c. The correct statement of net weight, and
   d. The name and address of processor or manufacturer.
2. Before the denaturing agents are applied to pieces more than four inches in diameter, the pieces shall be freely slashed or sectioned. The application of any of the denaturing agents listed in this Section to the outer surfaces of molds or blocks of boneless meat, meat by-products, or meat food products shall not be considered adequate. The denaturing agent shall be mixed thoroughly with all of the material to be denatured and shall be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. Denaturant shall be used to give the meat, meat by-products, raw animal fat, or rendered animal fats and oils, a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.
3. All denaturing shall be done immediately upon condemnation of the meat or product, or immediately after the meat or product is prepared or during preparation.
4. True containers shall be legibly marked with the words "Beef or horse meat from dead animals for pet food only and not for human consumption" in letters at least 3/4 inch in height, on all sides and in at least two places if the container has less than four sides.
5. Every carrying container in which meat obtained from a dead animal is packaged shall have an exterior surface sufficiently absorbent so that the markings on at least two sides, in letters two inches high "Pet food only," will not become illegible during handling, storage, or transportation of the container.

C. Sales of meat obtained from a dead animal are permitted only to kennels, zoos, and animal food manufacturing plants registered by the Department, and records of sales shall be maintained by the purchaser and animal food manufacturing plant.

D. Each vehicle used for the transportation of fresh or frozen pet food shall be clearly and legibly marked with the name of the manufacturer in letters not less than four inches in height on both sides of the cab or body.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-207 renumbered from Section R3-9-207 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3).

R3-2-208. Diseased and Injured Animals

A. Diseased animals.
1. No meat from any diseased animal shall be processed, sold or stored at premises where food is sold or prepared for human consumption, unless it is decharacterized and clearly identified "Not for Human Consumption."
2. Subsection (A)(1) does not apply to meat from animals affected by any disease that does not render the meat unfit

for human consumption if the affected animals are slaughtered in establishments where meat inspection is maintained under A.R.S. § 3-2051 and 9 CFR, Chapter III, Subchapter A, which is incorporated by reference in R3-2-202(A).

B. Injured animals. An injured animal may be slaughtered by:
1. The animal's owner at the owner's premises if the meat is used solely for consumption by the owner, the owner's immediate family, or employees. The owner shall keep the animal's hide until it has been inspected and marked or tagged by a livestock officer under A.R.S. § 3-2011.
2. An official slaughter establishment, if:
   a. The animal is inspected by a livestock officer at origin; or
   b. The animal is transported to the official slaughter establishment with a self-inspection certificate; or
   c. The animal is transported to an official slaughter establishment with a waiver from the Associate Director and the waiver is documented by the livestock officer.
3. An exempt slaughterer, if the meat is used solely for consumption by the animal's owner, the owner's immediate family or employees, and if:
   a. The animal's body temperature is 103º F or less and except for the injury its condition appears normal; and
   b. The animal is inspected by a livestock officer at origin who verifies the temperature and condition of the animal and approves it for slaughter; or
   c. The Associate Director waives the inspection and the waiver is documented by the livestock officer, and the exempt slaughterer verifies the temperature and condition of the animal.

C. Non-ambulatory disabled cattle. Non-ambulatory disabled cattle shall not be slaughtered by any official or exempt slaughterer. Non-ambulatory disabled cattle are cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertabal column, or metabolic conditions.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-203 renumbered from Section R3-9-203 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-208 renumbered to R3-2-203; new Section R3-2-208 renumbered from Section R3-2-203 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-209. Exempt Non-mobile Slaughter Establishments

In addition to A.R.S. § 3-2050 and the material incorporated in R3-2-202(A), the following shall be provided when slaughtering animals in an exempt non-mobile slaughter establishment:
1. General.
   a. A metal knocking box or concrete box with metal door to confine the animal before stunning;
   b. A distance of at least three feet from the header rail to the adjacent wall;
   c. A bleeding rail with its top at least 16 feet above the floor; and
   d. Dressing rails and cooler rails placed so the lowest part of the carcass is at least 12 inches from the floor.
2. Coolers. A chill cooler and separate holding cooler may be provided or both may be combined in one unit. The walls shall be light colored, smooth, free from cracks, and impervious to moisture. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant material. Rails shall be spaced at least two feet from walls, columns, refrigeration equipment, or other fixed equipment to prevent contact with the carcasses.
3. Disposal of blood. If blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises.
4. Drainage.
   a. Floors that require flushing during operations shall have sloped floor drains to carry off the effluent. Drainage systems shall conform to state and local plumbing codes.
   b. Grease recovery systems shall not mask odors or create a harborage for pests.
5. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to ensure the absence of dust, masking odors, or steam vapors. To ensure adequate lighting at all times and at all places, natural lighting shall be supplemented by well-distributed artificial lighting.
6. Potable water supply, wash basins, sterilizing facilities.
   a. Hot and cold running water, under pressure, shall be available in all parts of the plant and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.
   b. One or more wash basins shall be located in the slaughtering department. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.
   c. The tool sterilizer shall be maintained at 180° F and be in operation at all times during slaughter activities.
7. Protection against flies, rodents, or other vermin.
   a. Establishments shall be free of flies, rats, mice, roaches, and other pests or vermin. The establishment shall be constructed and maintained to prevent entrance of pests to the premises and to eliminate breeding places from the surrounding area and in the establishment.
   b. Animal handling facilities such as stock pens and runways shall be clean and manure or other waste materials removed shall not accumulate at or near the establishment.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

ARTICLE 3. FEEDING OF ANIMALS

R3-2-301. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-301 renumbered from Section R3-9-301 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-302. Permit to Feed Garbage to Swine; Requirements

A swine garbage feeding permit holder or applicant for a permit to feed garbage to swine shall comply with the following requirements:

1. An approved cooker is installed, is in operating condition on the premises, and fenced off from all swine.
2. A concrete slab, trough, or other easily cleanable area, and equipment for feeding garbage is provided.
3. Premises utilized for swine garbage feeding are reasonably clean, free of litter, adequately drained, and provide for removal of animal excrement and garbage not consumed.
4. Individually operated swine garbage feeding premises are separated from other swine premises by a minimum distance of 200 feet in all directions and constructed to prevent the escape of any swine.
5. In addition, all swine garbage feeding permit holders shall follow all federal garbage feeding regulations as outlined in 9 CFR Part 166 as revised on January 1, 2018.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-302 renumbered from Section R3-9-302 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

R3-2-401. Definitions

1. "Animal Name" refers to the shelter impound number of the animal.
2. "Anti-Rabies Vaccine" is an active immunizing agent used to prevent infection caused by the rabies virus approved by the State Veterinarian pursuant to A.R.S. § 11-1002.
3. "Approved Rabies Vaccinator Curriculum" means an in-person vaccination training curriculum approved by the State Veterinarian of Arizona and administered by a supervising veterinarian.
4. "Biologics" means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.
5. "Certified Rabies Vaccinator" means an unlicensed individual who is appointed and certified by a supervising veterinarian and authorized under A.R.S. § 32-2240.02 to vaccinate domestic animals against rabies, who is employed by a shelter, as defined herein, and who in the absence of a licensed veterinarian, has agreed to supervise the acquisition, storage, administration, and record keeping of the anti-rabies vaccine.
6. "Compendium of Animal Rabies Prevention and Control" refers to the 2016 edition of the NASPHV Compendium of Animal Rabies Prevention and Control, incorporated by reference, and does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
7. "Domestic animal" means a mammal, not regulated by title 3, that is kept primarily as a pet or companion or that is bred to be a pet or companion.
8. "Foreign Animal Disease" means a transboundary animal disease or pest, or an aquatic animal disease or pest, not known to exist in the United States.
9. "NASPHV" refers to the National Association of State Public Health Veterinarians.
10. "Rabies Certificate" refers to the NASPHV FORM 51 (revised 2007) or equivalent computer-generated form.
11. "Shelter" means an animal care and control shelter or pound operated by any town, city, county or the state, including privately run animal shelters that are utilized by a town, city, county or the state.
12. "State Veterinarian" means the person appointed as the State Veterinarian under A.R.S. § 3-1211.
13. "Supervising Veterinarian" means a veterinarian licensed by the Arizona Veterinary Medical Examining Board, who is authorized under these rules to designate a Certified Rabies Vaccinator.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-401 renumbered from Section R3-9-401 (Supp. 91-4). Former Section R3-2-401 renumbered to R3-2-402; new Section R3-2-401 adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final rulemaking at 30 A.A.R. 311 (February 16, 2024), effective March 24, 2024 (Supp. 24-1).

R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories

A. All veterinarians and laboratories performing diagnostic services on animals shall:

B. Notify the State Veterinarian at (602) 542-4293 and diseasereporting@azda.gov, within four hours of diagnosing or suspecting any disease or clinical signs of disease listed below:

1. African horse sickness
2. African swine fever
3. African trypanosomiasis
4. Anthrax
5. Avian influenza
6. Bovine Babesiosis
7. Bovine spongiform encephalopathy
8. Classical Swine Fever
9. Contagious agalactia
10. Contagious bovine pleuropneumonia
11. Contagious caprine pleuropneumonia
12. Crimean Congo Hemorrhagic Disease
13. Dourine
14. Enterovirus encephalomyelitis
15. Equine infectious anaemia

16. Equine Neurologic Diseases (Eastern, Western, Venezuelan, West Nile Virus, Equine Herpesvirus-1/ Equine Herpesvirus Myeloencephalopathy)
17. Foot and Mouth Disease
18. Glanders
19. Heartwater (Ehrlichia ruminantium)
20. Hemorrhagic septicemia (Pasteurella multocida)
21. Hendra virus (Equine morbillivirus)
22. Infectious haematopoietic necrosis of fish
23. Japanese encephalitis
24. Lumpy skin disease
25. Malignant catarrhal fever
26. Melioidosis (Burkholderia pseudomallei)
27. Nairobi sheep disease
28. Newcastle Disease
29. Nipah
30. Peste des Petits Ruminants
31. Rabies
32. Rabbit Hemorrhagic Disease
33. Rift Valley Fever
34. Rinderpest
35. Schmallenberg virus/Akabane
36. Senecavirus A
37. Screwworm myiasis
38. Sheep and goat pox
39. Surra (Trypanosoma evansi)
40. Swine Vesicular Disease
41. Theileriosis (T. parva or T. annulata)
42. Tuberculosis (Mycobacterium bovis)
43. Tularemia
44. Turkey rhinotracheitis (Avian metapneumovirus)
45. Trypanosomiasis
46. Viral hemorrhagic septicemia of fish
47. Vesicular exanthema of swine virus
48. Vesicular stomatitis

B. Notify the State Veterinarian at (602) 542-4293 and diseasereporting@azda.gov, within 24 hours of diagnosing or suspecting any disease or clinical signs of disease listed below:

1. Brucellosis (Brucella spp.)
2. Chronic Wasting Disease in Cervids
3. Contagious Equine Metritis
4. Epizootic Lymphangitis
5. Equine Piroplasmosis
6. Equine Viral Arteritis
7. Fowl typhoid (Salmonella gallinarum)
8. Ornithosis (Psittacosis, Avian Chlamydiosis, Chlamydophila psittaci)
9. Pigeon Fever (Corynebacterium pseudotuberculosis)
10. Pseudorabies (Aujeszky's disease)
11. Q fever
12. Pullorum disease (Salmonella pullorum)
13. Scrapie
14. Sheep scabies
15. Strangles (Strep equi spp. equi)
16. Swine enteric coronavirus diseases
17. Trichomoniasis (Tritrichomonas foetus)

Aquatic Diseases

1. Crayfish plague
2. Epizootic hematopoietic necrosis disease
3. Epizootic ulcerative syndrome
4. Gyrodactylosis
5. Abalone Viral Ganglioneuritis
6. Bonamiosis (B. exitiosa/ostreae)
7. Marteiliosis (M. refringens)
8. Perkinsosis (P. marinus /olseni)
9. Salmonid alphavirus infection
10. Infection with Xenohaliotis californiensis
11. Infectious hematopoietic necrosis
12. Infectious hypodermal and haematopoietic necrosis
13. Infectious myonecrosis
14. Infectious salmon anemia
15. Koi herpesvirus disease
16. Necrotizing hepatopancreatitis
17. Red sea bream iridoviral disease
18. Spring viremia of carp
19. Taura syndrome
20. Tilapia Lake Virus (TiLV)
21. Viral hemorrhagic septicemia
22. Viral nervous necrosis (VNN)
23. White spot disease
24. White tail disease
25. Yellowhead

C. Notify the State Veterinarian by email at diseasereporting@azda.gov or facsimile at (602) 542-4290 within 30 days after diagnosing any of the diseases listed below:

1. Anaplasmosis
2. Avian infectious bronchitis
3. Avian infectious laryngotracheitis
4. Bluetongue
5. Bovine cysticercosis
6. Bovine genital campylobacteriosis
7. Bovine viral diarrhea
8. Camelpox
9. Caprine arthritis/encephalitis
10. Duck viral hepatitis
11. Echinococcosis/hydatidosis
12. Enzootic abortion of ewes
13. Enzootic bovine leukosis (BLV)
14. Epizootic hemorrhagic disease
15. Equine Herpesvirus - 4
16. Equine influenza
17. Infectious bovine rhinotracheitis
18. Infectious bursal disease
19. Johne's disease
20. Leishmaniasis
21. Leptospirosis
22. Maedi-visna (OPP)
23. Marek's disease
24. Mycoplasma Gallisepticum
25. Mycoplasma Synoviae
26. Myxomatosis in rabbits
27. Porcine cysticercosis
28. Porcine Reproductive and Respiratory Syndrome
29. Paratyphoid abortion in Ewes (Salmonella abortusovis)
30. Swine influenza
31. Trichinellosis (Trichinella spiralis)

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-402 renumbered from Section R3-9-402 (Supp. 91-4). Former Section R3-2-402 renumbered to R3-2-403; new Section R3-2-402 renumbered from R3-2-401 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26

A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-403. Quarantine for Diseased Animals

A. A quarantine order shall be issued by the Director or his designee when the presence of a Foreign Animal Disease is suspected or diagnosed.

B. A quarantine order may be issued by the Director or his designee on the advice of the State Veterinarian when the presence of a disease is suspected or diagnosed.

C. The quarantine order may isolate specific animals, premises, counties, districts, or sections of the state and shall restrict the movement of animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-403 renumbered from Section R3-9-403 (Supp. 91-4). Former Section R3-2-403 repealed; new Section R3-2-403 renumbered from Section R3-2-402 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4). New Section made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-404. Importation, Manufacture, Sale, and Distribution of Biologics

A. Any person importing, manufacturing, selling, or distributing any biologic intended for diagnostic or therapeutic treatment of animals shall request, in writing, permission from the State Veterinarian.

B. The State Veterinarian shall not approve the importation, manufacture, sale, or distribution of any biologic that will interfere with the state's animal disease control programs.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-404 renumbered from Section R3-9-404 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-405. Depopulation of Animals Infected with a Foreign Animal Disease

When a Foreign Animal Disease is diagnosed, the State Veterinarian may order the owner, agent, or feedlot operator to immediately depopulate and dispose of all infected and exposed animals on the premises if necessary to prevent the spread of the disease among animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-405 renumbered from Section R3-9-405 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-406. Disease Control; Designated Feedlots

A. Designated feedlots are subject to the following restrictions:

B. A designated feedlot shall have a restricted feeding pen. A restricted feeding pen shall:

1. Be isolated from all other pens,
2. Have separate loading and unloading chutes, alleys, and handling facilities from all other pens,
3. Not share water or feeding facilities accessible to other areas,
4. Be posted at all corners with permanently affixed signs stating "Restricted Feeding Area,"
5. Have a minimum of eight feet between restricted and other pens and facilities, and
6. Have no common fences or gates with other pens.

C. An operator may place diseased cattle or bison that are under state quarantine into a restricted feeding pen as follows:

1. All cattle or bison, except steers and spayed heifers, shall be branded with an "F" at least two inches in height, adjacent to the tailhead before entering the pen; and
   a. Imported cattle or bison, of any age and from any area shall be transported under seal and shall be accompanied by an entry permit number and a Certificate of Veterinary Inspection or federal restricted movement document; or
   b. Native Arizona cattle or bison shall be accompanied by an Arizona livestock inspection certificate, as approved by the State Veterinarian or designee.

D. An operator may move cattle or bison from a restricted feeding pen to slaughter or to another designated feedlot only by prior written approval of the State Veterinarian or APHIS veterinarian.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-406 renumbered from Section R3-9-406 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-407. Disease Control; Equine Infectious Anemia

A. The Arizona official test for EIA is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS, and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.

B. Disposal of equine testing positive.

1. When an Arizona equine tests positive to EIA, the testing laboratory shall notify the State Veterinarian by telephone at (602) 542-4293 and email at diseasereporting@azda.gov, within four hours.
2. The EIA-positive equine shall be quarantined at its current location, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian within two weeks of the notification.
3. Within 14 days of being notified by the testing laboratory of a positive test conducted under subsection (B)(2), the State Veterinarian or the State Veterinarian's designee

shall brand the equine on the left side of its neck with "86A" not less than two inches in height.

4. Within 10 days after being branded, the EIA-positive equine shall be:
   a. Humanely destroyed,
   b. Confined to a screened stall marked "EIA Quarantine" that is at least 200 yards from other equine, or
   c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
5. Offspring of mares testing EIA-positive shall be quarantined, segregated from other equine, and tested for EIA at six months of age. Offspring testing positive shall be handled as prescribed in subsections (B)(3) and (B)(4).
6. If an EIA-positive equine is located on premises other than those of the owner at the time a quarantine under this Section, the State Veterinarian may authorize movement of the EIA-positive equine to the owner's premises if requested by the owner. Movement shall be under the direct supervision of the State Veterinarian or the State Veterinarian's designee. If the owner lives in another state, the owner may move the equine to that state with the permission of the chief livestock health official of the state and APHIS.

C. The State Veterinarian shall require testing of any equine located in the same facility as the EIA-positive equine or any equine considered exposed to the EIA-positive equine. The owner of the equine tested shall pay the expenses for the testing.

D. The owner of any equine found to be EIA-positive shall not be indemnified by the state for any loss caused by the destruction or loss of value of the equine.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-407 renumbered from Section R3-9-407 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-408. Disposition of Livestock Exposed to Rabies

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the NASPHV Compendium of Animal Rabies Control.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-408 renumbered from Section R3-9-408 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final rulemaking at 30 A.A.R. 311 (February 16, 2024), effective March 24, 2024 (Supp. 24-1).

R3-2-409. Rabies Vaccines for Animals

A. All animals in Arizona vaccinated against rabies shall be vaccinated as prescribed in the NASPHV Compendium of Animal Rabies Control.

B. A person who is not a licensed veterinarian may be certified as a rabies vaccinator by a licensed veterinarian after completing the approved rabies-vaccinator curriculum. Initial certification shall be valid for one year and renewals after the first year shall be valid for two years. Each renewal shall only be granted upon completion of the current rabies-vaccinator curriculum.

C. Anti-rabies vaccines may be administered under the supervision of a licensed veterinarian or by a Certified Rabies Vaccinator to animals on the premises of shelters before release.

D. Duties and responsibilities of the Certified Rabies Vaccinator are to:

1. Abide by all local, state, and federal laws and regulations pertaining to the operation of a shelter, including those laws and regulations governing possession and use of anti-rabies vaccine.
2. Comply with the Compendium of Animal Rabies Prevention and Control, including storage of anti-rabies vaccine at the required temperature, and administration of anti-rabies vaccine in an aseptic manner that meets the current standards of veterinary practice.
3. Refer for appropriate treatment domestic animals that experience an adverse event to a licensed veterinarian; and report the adverse event to the supervising veterinarian and the vaccine manufacturer.
4. Procure anti-rabies vaccine through the state veterinary license number of the supervising veterinarian.
5. A Rabies Certificate must be completed in full for every vaccinated domestic animal, shall include the legible name of the Certified Rabies Vaccinator, and shall be signed by the Certified Rabies Vaccinator or supervising veterinarian.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-409 renumbered from Section R3-9-409 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final rulemaking at 30 A.A.R. 311 (February 16, 2024), effective March 24, 2024 (Supp. 24-1).

R3-2-409.01. Requirements of Certified Rabies Vaccinator Approved Curriculum; Recordkeeping; Inspection

A. Approved curriculum training shall include an instructional section and a practical exam showing competency; and shall include, but not be limited to, the following topics:

1. Anatomy.
2. Personnel safety.
3. Acceptable methods of disposal of supplies.
4. Humane methods of handling domestic animals.
5. Proper vaccine storage and handling.
6. Proper vaccine administration.
7. Record keeping.

8. Management and reporting of adverse events.

B. These rules are provided as components of a certified rabies-vaccinator program, and no fee shall be charged by the State Veterinarian, however the State Veterinarian takes no position on establishment of reasonable fees by a supervising veterinarian for implementation of a certified rabies-vaccinator program.

C. The Certified Rabies Vaccinator shall keep records of all vaccination-related activities for three years including, but not limited to:
1. Rabies certificates.
2. Adverse event reports, including reports of human exposure to rabies vaccines.

D. A shelter is subject to periodic random inspection by the Office of the State Veterinarian. Upon request by the Office of the State Veterinarian, the responsible supervising veterinarian or Certified Rabies Vaccinator shall immediately produce requested records.

E. Following an audit or inspection, if evidence exists of non-compliance with the above standards, the State Veterinarian reserves the right to terminate a Certified Rabies Vaccinator's certification.

Historical Note

New Section made by final rulemaking at 30 A.A.R. 311 (February 16, 2024), effective March 24, 2024 (Supp. 24-1).

R3-2-410. Trichomonas Testing Requirements

A. Definitions. For purposes of this Section, the following definitions shall apply.

"Accredited Veterinarian" means an individual who is currently licensed to practice veterinary medicine in the State of Arizona and is an Accredited Level II by the United States Department of Agriculture, Animal Plant Health Inspection Service.

"Approved Laboratory" means any laboratory designated and approved by the State Veterinarian for examining *T. foetus* samples and reporting all results to the State Veterinarian.

"Bull" means an intact male bovine 12 months of age and older and is not confined to a drylot dairy.

"Change of Ownership" means when a bull is sold, leased, gifted, or exchanged and changes premises for breeding purposes in Arizona.

"Commingle" means cattle of opposite sex in the same enclosure or pasture with a reasonable opportunity for sexual contact.

"Direct to Slaughter" means transporting an animal from site of testing to a sale yard or directly to a slaughter plant without unloading or commingling prior to arrival.

"Official *T. foetus* bull test" means the sampling of a bull by a licensed, accredited veterinarian. Such test must be conducted after at least seven days separation from all female bovine. The bull and sample must be officially and individually identified and documented for laboratory submission. The official laboratory test shall be a polymerase chain reaction (PCR), or other technologies as approved by the State Veterinarian and adopted through a Director's Administrative Order. The test is not considered official until results are reported by the testing laboratory.

"Official *T. foetus* laboratory testing" means the laboratory procedures that shall be approved by the State Veterinarian for identification of *T. foetus*.

"Positive *T. foetus* bull" means a bull that has had a positive official *T. foetus* bull test.

"Tritrichomonas foetus" OR "*T. foetus*" means a protozoan parasite that is the causative agent to the contagious venereal disease Trichomoniasis.

B. Testing requirements for Official *T. foetus*.
1. All Arizona origin bulls sold, leased, gifted, exchanged or otherwise changing possession for breeding purposes in Arizona shall be tested for *T. foetus* via Official *T. foetus* bull test prior to sale or change of ownership in the state, unless going to direct slaughter. *T. foetus* testing shall be performed on bulls prior to change of ownership of that bull.
2. The Official *T. foetus* test shall be collected by an Accredited Veterinarian and performed though an Approved Laboratory.
3. Pooled testing is not an official test.
4. The *T. foetus* negative test is valid for 60 days after the test is performed, providing the bull is kept separated from all female bovine.

C. Positive bull identification.
1. When a positive *T. foetus* bull is identified, the Accredited Veterinarian shall notify the producer upon receipt of the positive test results.
2. Regardless of R3-2-402, the Accredited Veterinarian and Approved Laboratory shall notify the State Veterinarian of a positive *T. foetus* bull within 24 hours of receiving the results. The State Veterinarian's Office, working in coordination with the regional livestock inspection staff, shall to the best of their ability notify the regional bovine producers about the positive test within 14 days upon notification of positive test. The State Veterinarian and/or livestock inspection staff is not required to reveal any details of the test just that there is a positive test in the region.
3. The Accredited Veterinarian that performed the test shall return to place of testing to verify the Official Identification of the positive bull.
4. The Accredited Veterinarian, or a person under direct supervision of the Veterinarian, shall brand the bull with an official "S" brand adjacent to the tailhead on the right hip.
5. If the bull testing positive is not at the premises where the *T. foetus* testing occurred, the Accredited Veterinarian will immediately notify the State Veterinarian's Office.
6. If an Accredited Veterinarian is unable to return to the premises in a time that is reasonable for sale of the bull, the producer shall take the positive *T. foetus* bull directly to the regional livestock sale yard.
   a. The producer shall immediately notify the sale yard of the positive *T. foetus* bull. Failure to notify the sale yard of the positive *T. foetus* bull will result in a violation of this Section and the producer shall be subject to the penalties of A.R.S. § 3-1205(D).
   b. Prior to sale at the sale yard, a Livestock Officer shall verify the official identification of the positive *T. foetus* test bull.
   c. After the official identification is verified, the bull shall be branded with an official "S" brand adjacent to the tailhead on the right hip. The branding shall be

done under direct supervision of a Livestock Officer or Livestock Inspector.

7. If a bull arrives at a livestock auction without an Official *T. foetus* bull test, the bull shall be quarantined at the auction and tested at the expense of the owner or shall be branded with an "S" brand and be sold only for slaughter.

D. Disposal of bull testing positive.

1. A bull testing positive for *T. foetus* or branded with the official "S" brand shall go direct to slaughter or shall be placed under State Quarantine and fed in a restricted feeding pen within a designated feedlot according to R3-2-406.
2. The *T. foetus* positive bull shall not be commingled with any other female bovine. The bull shall go from the testing premises to direct slaughter or to the restricted feeding pen within 30 days of the positive *T. foetus* test.
3. All remaining herd bulls shall be under a Trichomonas Herd Management Program overseen by the Herd Veterinarian until two negative *T. foetus* tests are performed and documented.
4. "S" branded bulls purchased at a sale yard shall go direct to a slaughter plant without unloading or commingling prior to arrival.

E. Trespassing or Stray Bulls.

1. In the event of a trespassing or stray bull, the herd owner who locates the bull, may request an Official *T. foetus* bull test for that bull. In the event of a positive Official *T. foetus* bull test, subsections (B) and (C) shall apply.
2. The cost of the veterinary services and Official *T. foetus* bull test shall be the responsibility of the herd owner. In the event of a stray bull, the animal will be subject to A.R.S. §§ 3-1401 et seq.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020; new Section made by final rulemaking at 26 A.A.R. 812, effective June 8, 2020 (Supp. 20-2).

R3-2-411. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-412. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-413. Sheep and Goats; Intrastate Movement

A. Before intrastate movement of a sheep more than 18 months of age, or a sheep or goat of any age not in a slaughter channel, the producer shall identify the animal to the flock of birth using official identification before leaving the flock of birth. A sheep or goat not in a slaughter channel includes an animal not for sale, transfer, or movement to:

1. A slaughter facility,
2. Custom slaughter, or
3. A feeding operation before movement to slaughter.

B. Subsection (A) does not apply if the first point of commingling with animals other than those in the flock of birth is an Arizona auction market that is an approved tagging site.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective January 1, 2003 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

R3-2-501. Tuberculosis Control and Eradication Procedures

A. Procedures for tuberculosis control and eradication in cattle, bison, and goats shall be as prescribed in 9 CFR Part 77 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

B. Procedures for tuberculosis control and eradication in cervidae not listed as restricted live wildlife in A.A.C. R12-4-406 shall be as prescribed in 9 CFR 77 Subpart C as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective October 16, 1986 (Supp. 86-5). Section R3-2-501 renumbered from Section R3-9-501 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-502. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-502 renumbered from Section R3-9-502 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

R3-2-503. Brucellosis Control and Eradication Procedures

A. Procedures for brucellosis control and eradication in cattle and bison shall be as prescribed in 9 CFR 78 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

B. Procedures for brucellosis control and eradication in swine shall be as prescribed in 9 CFR 78 Subpart D as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

C. Procedures for brucellosis control and eradication in animals not listed as restricted live wildlife in A.A.C. R12-4-406, shall be as prescribed in the USDA publication, Brucellosis in Cervidae: Uniform Methods and Rules, effective September 30, 2003. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-503 renumbered from Section R3-9-503 (Supp. 91-4). Amended March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-504. Pseudorabies Procedures for Eradication

Procedures for pseudorabies control and eradication in swine shall be as prescribed in 9 CFR 85 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-505. Scrapie Procedures for Eradication

The Department controls and eradicates scrapie using the procedures outlined in 9 CFR 79 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-601. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-601 renumbered from Section R3-9-601 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-602. Importation Requirements

A. All animals transported or moved into the state of Arizona, shall be accompanied by a valid, official Certificate of Veterinary Inspection from the state of origin, or a VS 9-3 form for National Poultry Improvement Plan flocks. All animals shall be imported in accordance with this Section and the species-specific Section in this Article. Any violation of this Article is subject to a hold order pursuant to R3-2-605.

B. Livestock may not enter the state of Arizona unless accompanied by an Arizona entry permit number documented on the Certificate of Veterinary Inspection. This requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state, except:

1. Equine;
2. Livestock consigned directly to slaughter at a state or federally licensed slaughter establishment; or
3. Livestock being transported through the state.

C. An animal affected with or recently exposed to any infectious, contagious, or communicable disease, or which originates in a state or federal quarantine area, shall not be transported or moved into the state of Arizona unless a permit for the entry is first obtained from the Arizona State Veterinarian's Office. All conditions for the movement of animals from a quarantined area established by the quarantining authority or APHIS shall be met. Animals imported from a quarantine area may be subject to additional import requirements by the State Veterinarian prior to entry into Arizona.

D. The owner or owner's agent shall obtain prior permission from the State Veterinarian to ship or move into the state of Arizona any animal from a lot or herd from which an animal shows clinical signs of disease or positive reaction to a test required for admission to Arizona.

E. The Director may enter into an agreement to allow New Mexico livestock consigned directly to an Arizona livestock auction to enter the state on a New Mexico brand inspection certificate in place of a Certificate of Veterinary Inspection. If the agreement is entered, it shall be posted on the Arizona Department of Agriculture's website. In the event the agreement is terminated or expires, the Department shall put notice of the termination on the website. The livestock owner or owner's agent is responsible for ensuring that the agreement is current prior to shipping the livestock. This process is subject to the restrictions included in the agreement.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-602 renumbered from Section R3-9-602 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-603. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section

R3-2-603 renumbered from Section R3-9-603 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-604. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-604 renumbered from Section R3-9-604 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-605. Hold Order for Animals Entering Illegally

A. Animals entering the state in violation of any Section under this Article, may be placed under a hold order at the risk and expense of the owner until released by an authorized representative of the State Veterinarian. Animals placed under a hold order for noncompliance with this Article may be released only after the State Veterinarian is satisfied by testing, dipping, or observation over time, that the animals are not a threat to the livestock industry.

B. The State Veterinarian may order that an imported animal failing to meet entry requirements be returned to the state of origin, consigned directly to slaughter, confined to a designated feedlot, or consigned to a feedlot in another state within two weeks of the request. Any extension to this time-frame must be approved in writing by the State Veterinarian.

C. If the owner or owner's agent fails to comply with an order to return an animal to the state of origin within the time-frame required in subsection (B), the Department shall require that the animal be immediately gathered and tested at the owner's risk and expense to avoid exposure of Arizona animals to disease. The owner shall pay the expenses no later than five days after receipt of the bill. Failure to do so will result in an auction of sufficient livestock to pay the expenses which shall be held within 10 days at public auction. If additional expenses occur due to lack of cooperation by the owner or the owner's agent, the Director shall order the further sale of livestock.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Former Section R3-9-605 renumbered to R3-2-605 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-606. Certificate of Veterinary Inspection

A. A Certificate of Veterinary Inspection is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:
1. The name and address of the Consignor and Consignee;
2. The physical address of the origin of the animal;
3. The physical address of the animal's final destination;
   a. Entry permit number if applicable;
   b. Official identification if applicable; and
   c. Certificate of Veterinary Inspection individual certificate number.
   d. Qualifying required tests with completion dates.

B. The Certificate of Veterinary Inspection shall be forwarded to the State Veterinarian in Arizona within 14 days of issue.

C. A VS form 17-30 is deemed a valid international CVI if the following conditions are met:
1. Accompanied by a valid brand inspection certificate from a southern border state with an entry permit number; and
2. Official identification as documented on the VS form 17-30.

D. Official Certificates of Veterinary Inspection may be used in electronic or paper form.

E. Additions, deletions, and unauthorized or uncertified changes inserted or applied to a Certificate of Veterinary Inspection renders the certificate void and may be subject to state or federal penalties.

F. The veterinarian issuing a Certificate of Veterinary Inspection shall certify that the animals shown on the Certificate of Veterinary Inspection are free from evidence of any infectious, contagious, or communicable disease or known exposure.

G. An accredited veterinarian shall inspect animals for entry into the state.

H. The Director may limit the period for which a Certificate of Veterinary Inspection is valid to less than 30 days if advised by the State Veterinarian of the occurrence of a disease that constitutes a threat to the livestock industry.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-606 renumbered from Section R3-9-606 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-607. Entry Permit Number

A. An entry permit number for interstate movement may be obtained from the Office of the State Veterinarian, by calling (602) 542-4293 during the hours of 8 a.m. to 5 p.m. Monday through Friday, excluding state holidays. Any person applying for an entry permit number shall provide the following information:
1. The name and address of the Consignor and Consignee;
2. The number and kind of animals;
3. The physical address of the origin of shipment;
4. The physical address of the shipment's final destination;
5. The method of transportation; and
6. Any other information required by the State Veterinarian.

B. An entry permit number is valid for a maximum of 30 calendar days from the date of issuance unless otherwise indicated on the CVI.

C. An entry permit number shall be issued if the animals listed on the Certificate of Veterinary Inspection are in compliance with this Article. To cope with changing disease conditions, the State Veterinarian may refuse to issue an entry permit number or may require additional conditions not specifically established in this Article if necessary to protect animal health in Arizona.

D. The entry permit number issued shall be affixed or written on the Certificate of Veterinary Inspection, brand inspection certificate, and any other official documents as follows: "Arizona Permit No. _____" followed by the serialized number.

E. The State Veterinarian shall refuse to grant an entry permit number to any person who repeatedly commits the following:

1. Giving false information concerning an entry permit number for transportation of animals,
2. Failing to fulfill the conditions of an entry permit number, or
3. Failing to obtain an entry permit number.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-607 renumbered from Section R3-9-607 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-608. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-608 renumbered from Section R3-9-608 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-609. Diversion; Prohibitions

A person consigning, transporting, or receiving an animal into the state of Arizona shall not authorize, order, or carry out diversion of the animal to a destination or consignee other than as set forth on the Certificate of Veterinary Inspection and entry permit, if required, without first obtaining permission from the State Veterinarian.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-609 renumbered from Section R3-9-609 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-610. Tests; Official Confirmation

A state or federal animal diagnostic laboratory or APHIS-approved laboratory shall perform or confirm any animal testing required by a state or federal authority as a condition for entry into Arizona.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-610 renumbered from Section R3-9-610 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

R3-2-611. Transporter Duties

A. All owners and operators of railroads, trucks, airplanes, or other conveyances transporting animals into or through the state shall possess all of the importation documents required by this Article. These documents shall be attached to the waybill, or be in the possession of the vehicle driver, or person in charge of the animals. When a single Certificate of Veterinary Inspection and entry permit number is issued for animals being moved in more than one vehicle, the driver of each vehicle shall possess the original or a copy of the Certificate of Veterinary Inspection containing the entry permit number, if required.

B. The owner or operator of a railroad car, truck, airplane, or other conveyance used to transport animals into or through the state shall maintain the conveyance in a clean and sanitary condition.

C. The owners and operators of railroads, trucks, airplanes, or other conveyances who transport animals into the state in violation of this Section shall clean and disinfect the conveyance in which the animals were illegally brought into the state before using the conveyance for transporting more animals. The cleaning and disinfection shall be performed under the supervision of an authorized representative of the State Veterinarian or the USDA.

D. The owners or operators of railroads, trucks, airplanes, or other conveyances shall follow the USDA requirements and Arizona Department of Agriculture rules and statutes, in the humane transport of animals into, within, or through the state.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-611 renumbered from Section R3-9-611 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-612. Importation of Cattle and Bison

A. The Certificate of Veterinary Inspection for cattle and bison shall include:

1. A valid entry permit number.

2. The number of cattle and bison covered by the Certificate of Veterinary Inspection, an accurate description and official identification, if applicable except for "F" branded heifers consigned to a designated feedlot identified by brand.
3. The health status of the cattle and bison including:
   a. The date of the inspection;
   b. The dipping date, if applicable;
   c. The date of negative results for required testing under this Article; and
   d. The vaccination status as required by this Article.
4. The method of transportation; and
5. For bulls subject to testing under R3-2-612(I), a statement that the bulls:
   a. Tested negative for Tritrichomonas foetus within 30 days prior to shipment using a polymerase chain reaction test; and
   b. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.

B. The owner of cattle and bison entering Arizona or the owner's agent shall comply with the requirements in this Article. Failure to comply with entry requirements will incur the following conditions:
1. Pay the expenses incurred by a hold order to test and retest the imported cattle or bison or return them to the state of origin.
2. For imported beef breeding cattle, breeding bison, and dairy cattle, ensure that an accredited veterinarian applies official identification to each bovine or bison.

C. Arizona shall not accept:
1. Cattle or bison from brucellosis infected, exposed, or quarantined herds regardless of their vaccination or test status, or both, except:
   a. Steers and spayed females, and
   b. Cattle or bison shipped directly for immediate slaughter to an official state or federal slaughter establishment;
2. Cattle or bison of unknown brucellosis exposure status, unless consigned for feeding purposes to a designated feedlot;
3. Dairy cattle from a state or region within a foreign country without brucellosis status comparable to a Class-Free State, or without tuberculosis status comparable to an Accredited-Free State;
4. Dairy and dairy cross steers, and dairy and dairy cross spayed heifers from Mexico;
5. Beef breeding cattle or breeding bison from a state or region within a foreign country without brucellosis status comparable to a Class A State, or without tuberculosis status comparable to a Modified Accredited State.

D. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. Brucellosis testing is not required in dairy and beef cattle from a brucellosis Class-Free State that does not have free-ranging brucellosis infected bison or wildlife.
2. Brucellosis not required for any cattle or bison consigned to a designated feedlot that are branded with an "F" adjacent to the tail head as long as the State Veterinarian grants permission to apply the "F" brand upon arrival. All "F" branded cattle or bison that leave the designated feedlot shall be shipped directly to:
   a. An official state or federal slaughter establishment for immediate slaughter,
   b. Another designated feedlot, or
   c. Another state if shipping is permitted by the State Veterinarian in the state of destination.
3. All female dairy cattle four months of age or older, imported into Arizona, shall be official calfhood vaccinates, officially identified, certified, and legibly tattooed except for the following:
   a. Show cattle for exhibition,
   b. Cattle consigned directly to an official state or federal slaughter establishment for immediate slaughter, and
   c. Cattle consigned for feeding purposes to a designated feedlot with an entry permit number.
4. For beef breeding cattle, breeding bison, and dairy breeding cattle from a Class A state the owner or owner's agent:
   a. Shall ensure that the cattle remain under quarantine and isolation until the cattle test negative for brucellosis. The test shall be performed no earlier than 45 days and no later than 120 days after entry.
   b. Shall retest dairy cattle if the State Veterinarian determines there is a potential risk of the introduction of brucellosis in the state.
   c. Is not required to quarantine or test for brucellosis official calfhood vaccinates less than 18 months of age, if permission is granted by the State Veterinarian.
5. The owner or owner's agent:
   a. Shall notify the State Veterinarian within seven days of moving cattle or bison that are under quarantine from the destination listed on the import permit and Certificate of Veterinary Inspection.
   b. Shall notify the State Veterinarian at the time animals are retested for brucellosis, if the animals are under quarantine and are not moved from the destination listed on the import permit and Certificate of Veterinary Inspection.
   c. Is not required to notify the State Veterinarian if the cattle or bison are shipped directly to an official state or federal slaughter establishment for immediate slaughter.

E. Tuberculosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. No tuberculosis test is required for:
   a. Beef breeding cattle or breeding bison, from a tuberculosis accredited Free State if the state accredited status is documented on the Certificate of Veterinary Inspection and entry permit; or
   b. Steers and spayed heifers.
2. Beef breeding cattle and breeding bison from a Tuberculosis Modified Accredited State or Tuberculosis Class Free State with a Tuberculosis Quarantine in effect, shall test negative for Bovine Tuberculosis within 60 days prior to entry into Arizona.
3. All dairy breeding cattle greater than 120 days of age shall test negative for Bovine Tuberculosis within 60 days prior to entry into Arizona.

F. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from Mexico.

1. Prior to entry into Arizona, beef breeding cattle, breeding bison, or dairy cattle from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427, as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
2. The owner or owner's agent shall ensure that beef breeding cattle, breeding bison, and dairy cattle from Mexico remain under import quarantine and isolation until tested negative for brucellosis. The test shall not be performed earlier than 60 days nor later than 120 days after entry into Arizona. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless the State Veterinarian grants permission to apply the "F" brand on arrival. Unless neutered, all beef breeding cattle, breeding bison, and dairy cattle leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official identification records are kept on all incoming consignments and then submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all cattle and bison leaving the designated feedlot. A copy of the form shall accompany the cattle or bison to slaughter and a copy shall be submitted to the State Veterinarian.
3. Dairy cattle from Mexico shall test for brucellosis again 30 days after calving, unless the dairy cattle were consigned directly to a feedlot.

G. Tuberculosis testing requirements for cattle and bison imported into Arizona from Mexico.

1. Prior to entry into Arizona, cattle and bison from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427 as revised on January 1, 2018, incorporated by reference in subsection (F)(1).
2. Steers and spayed heifers from states or regions in Mexico shall not enter the state if they have not been determined by the State Veterinarian to have fully implemented the Control, Eradication, or Free Phase of the bovine tuberculosis eradication program of Mexico.
3. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Control Phase of the bovine tuberculosis eradication program of Mexico shall not be imported into Arizona without permission of the State Veterinarian.
4. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Eradication Phase of the bovine tuberculosis eradication program of Mexico may be imported into Arizona, if they have either:
   a. Tested negative for tuberculosis in accordance with procedures equivalent to the 9 CFR Part 77 as amended on January 9, 2013 within 60 days before entry into the United States, or
   b. Originated from a herd that is equivalent to an accredited herd in the United States and are moved directly from the herd of origin across the border as a single group and not commingled with other cattle or bison before arriving at the border.
5. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have achieved the Free Phase of the bovine tuberculosis eradication program of Mexico may move directly into Arizona without testing or further restrictions if they are moved as a single group and not commingled with other cattle before arriving at the border.
6. Beef breeding cattle and breeding bison from states or regions in Mexico may be imported into Arizona if the State Veterinarian determines the Eradication or Free Phase of the bovine tuberculosis eradication program of Mexico has been fully implemented and the breeding cattle and breeding bison remain under quarantine and isolation until retested negative for tuberculosis in accordance 9 CFR Part 77 as revised on January 1, 2018. The test shall be performed not earlier than 60 days but not later than 120 days after entry unless consigned to a designated feedlot for feeding purposes only. Unless neutered, all beef breeding cattle or breeding bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona, unless permission is granted by the State Veterinarian to apply the "F" brand on arrival. All beef breeding cattle or breeding bison leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official identification records are kept on all incoming consignments and submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all beef breeding cattle and breeding bison leaving the designated feedlot. A copy of the form shall accompany the cattle and bison to slaughter and a copy shall be submitted to the State Veterinarian.

H. Bovine scabies requirements.

1. The owner or owner's agent shall ensure that no cattle or bison affected with or exposed to scabies is shipped, trailed, driven, or otherwise transported or moved into Arizona except cattle or bison identified and moving under a VS Form 1-27 and seal for immediate slaughter at an official state or federal slaughter establishment.
2. The owner or owner's agent of cattle or bison from an official state or federal scabies quarantined area shall comply with the requirements of 9 CFR 73, Scabies in Cattle, as revised on January 1, 2018, before moving the cattle or bison into Arizona. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
3. The State Veterinarian may require that breeding and feeding cattle and bison from known scabies infected areas and states be dipped or treated even if the animals are not known to be exposed. The State Veterinarian shall require that dairy cattle be dipped only if the animals are known to be exposed; otherwise an accredited veterinarian's examination and certification shall be sufficient.

I. Trichomoniasis requirements for bulls imported into Arizona from other states.

1. The owner or owner's agent shall ensure bulls:
   a. Test negative for Tritrichomonas foetus within 30 days prior to shipment using a polymerase chain reaction test or a diagnostic test approved by the state veterinarian, except for bulls:
      i. Less than 12 months of age,
      ii. Consigned directly to a state or federal licensed slaughter facility,

iii. Consigned directly to a dairy,
iv. Consigned directly to an exhibition or rodeo,
v. Consigned directly to a licensed feedlot for castration on arrival,
vi. Branded with an "F" adjacent to the tailhead and consigned directly to a designated feedlot for feeding and later movement directly to slaughter, and

b. Have no breeding activity during the interval between the collection of a sample and the date of shipment.
c. The following statements documented on the CVI in reference to R3-2-612(A)(5):
i. Test negative for Tritrichomonas foetus within 30 days prior to shipment using a polymerase chain reaction test; and
ii. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.

2. An accredited veterinarian approved to collect samples for Tritrichomonas foetus testing by the state animal health official in the state of origin shall collect the Tritrichomonas foetus test samples.
3. A laboratory approved to conduct tests for Tritrichomonas foetus by the state animal health official in the state of origin shall perform the test for Tritrichomonas foetus.

J. For purposes of this Section beef breeding cattle means intact beef cattle.

Historical Note
Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-612 renumbered from Section R3-9-612 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-613. Importation of Swine

A. A Certificate of Veterinary Inspection for swine shall include:
1. A valid entry permit number;
2. The following statements recorded on the CVI;
a. The swine listed on this CVI have never been fed garbage; and
b. The swine listed on this CVI have not been vaccinated for pseudorabies;
3. Official Identification; and
4. If applicable, the validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd.

B. Brucellosis test requirements. Swine imported into Arizona from other states shall:
1. Originate from a validated swine brucellosis-free herd or from a swine brucellosis-free state; or
2. Test negative for brucellosis within 30 days before entry.

C. For purposes of this Section, breeding swine means intact swine that have had breeding activity.

D. It is unlawful for any person to import into the state of Arizona live feral swine. Any person or corporation owning or possessing a live feral swine in this state shall at all times keep such feral swine in a safe and suitable enclosure so that it may not run at large or damage the person or property of others. For purposes of this Section, feral swine means a hog, boar, or pig that appear to be untamed, undomesticated, or in a wild state; or appear to be contained for commercial hunting or trapping.

Historical Note
Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 29, 1984 (Supp. 84-3). Section R3-2-613 renumbered from Section R3-9-613 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-614. Importation of Sheep and Goats

A. A Certificate of Veterinary Inspection for sheep and goats shall include:
1. A valid entry permit number; and
2. A statement that:
a. The sheep or goats are not infected with bluetongue, or exposed to scrapie, and do not originate from a scrapie-infected or source flock; and
b. The sheep or goats test negative for Brucella ovis if a test is required by subsection (B); and if applicable
c. Breeding rams have been individually examined and are free of gross lesions of ram epididymitis.

B. A breeding ram six months of age or older shall test negative for Brucella ovis within 30 days of entry or originate from a certified brucellosis-free flock. An exhibition ram that returns to the out-of-state flock of origin within five days of the conclusion of the exhibit is exempt from the testing requirement of this subsection.

C. Arizona native commercial flocks participating in a Brucella ovis control program through testing performed by an accredited and licensed veterinarian may return to Arizona from another state without testing, provided the flock has not commingled with other flocks.

Historical Note
Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-614 renumbered from Section R3-9-614 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-615. Importation of Equine

A. A Certificate of Veterinary Inspection for equine shall include:
1. An accurate identification for each equine including age, sex, breed, color, name, brand, tattoo, scars, microchip if any, and distinctive markings; and
2. A statement that the equine has a negative test for EIA, including:
a. The date and results of the test;
b. The name of the testing laboratory; and
c. The laboratory accession number.

B. Equine entering the state are not required to obtain an entry permit number.

C. All equine six months of age or older shall, using a test established in R3-2-407(A), test negative for EIA within 12 months before entry. Testing expenses shall be paid by the owner.

D. Extended Equine Certificates of Veterinary Inspection (EECVI) are valid for the life of the certificate (up to 6 months) in the state of Arizona. The equine listed on the EECVI shall be officially identified with a microchip.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-615 renumbered from Section R3-9-615 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-616. Importation of Cats and Dogs

A dog or cat shall be accompanied by a Certificate of Veterinary Inspection that documents the animal is currently vaccinated against rabies if older than three months of age according to the requirements of the National Association of State Public Health Veterinarians' Compendium of Animals Rabies Control, incorporated by reference in R3-2-409.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-616 renumbered from Section R3-9-616 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-617. Importation of Poultry

Poultry entering the state shall appear healthy, not originate from a poultry quarantine area, comply with all interstate requirements of APHIS, and be accompanied by a Certificate of Veterinary Inspection or Form 9-3 from the National Poultry Improvement Program.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-617 renumbered from Section R3-9-617 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Repealed by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-618. Importation of Psittacine Birds

A. The owner or the owner's agent of a psittacine bird entering Arizona shall obtain a Certificate of Veterinary Inspection issued by a veterinarian within 30 days of entry, certifying:

1. The bird is not infected with the agent that causes avian chlamydiosis, and
2. The bird was not exposed to birds known to be infected with avian chlamydiosis within the past 30 days.

B. The Certificate of Veterinary Inspection shall accompany the psittacine bird at the time of entry into Arizona.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-618 renumbered from Section R3-9-618 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Repealed by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-619. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-619 renumbered from Section R3-9-619 (Supp. 91-4). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

R3-2-620. Importation of Zoo Animals

A. An owner or owner's agent may transport or move zoo animals into the state of Arizona if the animals are accompanied by an official Certificate of Veterinary Inspection, and consigned to a zoo or in the charge of a circus or show.

B. The owner, or owner's agent, of livestock except swine and equine in a "Petting Zoo" shall have the livestock tested for tuberculosis within 12 months before importation. A negative test result is required for entry into Arizona.

C. A business that transports or exhibits zoo animals shall be licensed by the Arizona Game and Fish Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-620 renumbered from Section R3-9-620 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-621. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

R3-2-622. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in

the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

ARTICLE 7. LIVESTOCK INSPECTION

R3-2-701. Department Livestock Inspection

A. A Division employee shall inspect range cattle, as defined in R3-2-702(A), at a ranch if the owner or agent of livestock is:
1. Moving cattle out-of-state,
2. Transferring cattle ownership, or
3. Shipping cattle for custom slaughter.

B. An owner or agent of cattle cannot be issued both non-range and range self-inspection certificates.

C. With prior approval from a Division employee, livestock can be moved to a licensed custom slaughter facility using the livestock owner's or agent's or feedlot operator's self-inspection certificate. A Division employee must validate the self-inspection certificate prior to slaughter.

D. The Department shall not issue a self-inspection certificate to an owner or agent of livestock or feedlot operator if that individual has been convicted of a felony under A.R.S. Title 3 within the three-year period before the date on the self-inspection application. The Department may deny self-inspection to an applicant if within the five-year period before the date on the self-inspection application, the applicant was convicted of any A.R.S. Title 3 offense or an A.R.S. Title 13 offense related to livestock. A Division employee shall inspect livestock if an applicant is denied self-inspection authority.

E. During fiscal year 2024, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of $10 plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-701 renumbered from Section R3-9-701 (Supp. 91-4). Section R3-2-701 repealed; new Section R3-2-701 adopted effective February 4, 1998 (Supp. 98-1). Error in subsection (A)(3) corrected under R1-1-109, filed with the Office of the Secretary of State October 18, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2017 (August 12, 2022), effective September 24, 2022 (Supp. 22-3). Amended by exempt rulemaking at 29 A.A.R. 3483 (November 3, 2023), effective October 30, 2023 (Supp. 23-4).

R3-2-702. Livestock Self-inspection

A. Definitions.

"Dairy" means an owner or agent of a place or premise where one or more lactating animals are kept for milking purposes and from which a part or all of the milk is provided, sold, or offered for sale that meets both of the following conditions: the livestock is not permitted to range and the dairy is permitted by the Department. If these conditions are met, then a Division employee may grant the applicant dairy status.

"Description" means sex, breed, color, and markings, as applicable to the type of livestock.

"Exhibition" means an event including a fair, show, or field day that has as its primary purpose the opportunity for a member of a livestock organization, including 4-H and FFA, to display an animal raised by the individual in a judged competition.

"Feedlot" means an operator of a beef cattle feedlot or feed yard in which the livestock is not permitted to range and that is licensed by the Department. If these conditions are met, then a Division employee may grant the applicant feedlot status.

"Livestock" means cattle, sheep, goats, and swine.

"Livestock broker" means an owner or agent who engages in the business of buying and selling livestock and has immediate possession of the livestock for 10 days or less in which the livestock is not permitted to range. If these conditions are met, then a Division employee may grant the applicant livestock broker status.

"Non-range" means any owner or agent of an enclosed property that is 100 acres or less that meets all of the following conditions: the fence enclosing the livestock is well maintained, the livestock is not permitted to range, and the owner or agent of the livestock lives where the livestock are kept. If these conditions are met, then a Division employee may grant the applicant non-range status.

"Range" means every character of lands, enclosed or unenclosed, outside of cities and towns, upon which livestock is permitted by custom, license or permit to roam and feed. A.R.S. § 3-1201(7)

"Range cattle" means cattle *customarily permitted to roam upon the ranges of the state, whether public domain or in private control, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.* A.R.S. § 3-1201(8)

B. Application.
1. Owners or agents of livestock or feedlot operators shall request a book of self-inspection certificates from the Department. The applicant shall submit a written application form obtained from the Department and provide the following information:
   a. Name, mailing address, physical address, telephone number, and email address;
   b. Name of business and type of livestock operation;
   c. Whether the applicant has been convicted of a violation of A.R.S. Title 3, or a violation of A.R.S. Title

13 related to livestock within the past five years, and if so, the case number, court, charge, and sentence;
d. Recorded brand number;
e. Individual or individuals designated to sign self-inspection certificates, if applicable; and
f. Signature and date.

2. The holder of a self-inspection book shall advise the Department within 30 days of any change to the information provided on an application form.
3. The holder of a self-inspection book shall renew registration with the Department every three years from the date the initial or renewal application form is signed.
4. If a holder with self-inspection privileges has been convicted of a criminal violation under A.R.S. Title 3, or a violation of Title 13 related to livestock, that holder shall notify the Department immediately and their privileges shall be revoked.
5. Prior to a Department employee issuing a book of self-inspection certificates, the owner shall submit the following payment amount and the Department shall receive the payment in full prior to issuing the book:
a. $25.00 for a twenty five page feedlot or livestock broker book;
b. $20.00 for a twenty page dairy book; or
c. $10.00 for a ten page non-range, range, sheep, goat, or swine book.

C. Self-inspection certificate.

1. An owner or agent of livestock or feedlot operator shall provide the following information, as applicable, on a self-inspection certificate whenever livestock subject to self-inspection are moved or ownership is transferred:
a. Name, address, and signature, of the owner or agent of livestock or feedlot operator;
b. Date of the shipment or transfer of ownership;
c. If moved, location from which and to which the livestock are moved, including the name of the auction, feedlot, arena, slaughter establishment, pasture, or other premises, and physical location;
d. Name of transporter;
e. Number and description of livestock;
f. Official identification of each dairy cattle and sexually intact cattle over 18 months of age shipped out of state and back tag numbers of culled dairy cattle;
g. Brand number, expiration date, and location;
h. Name and address of buyer;
i. Number of head of cattle sold for which Beef Council fees are payable under A.R.S. §§ 3-1236 and 3-1238.
2. The owner or agent of livestock or feedlot operator shall complete a self-inspection certificate, except when livestock are subject to inspection by a Division employee under R3-2-701, and distribute copies of the certificate as follows:
a. One copy and any fees that are owed under subsection (C)(1)(i) shall be sent to the Department within 10 days after the end of the month in which it was used;
b. If the livestock are shipped, the original certificate shall accompany the livestock whenever they are in transit and one copy shall be retained by the person transporting the livestock; or
c. If ownership of the livestock is transferred without shipment, two copies shall be provided to the new owner or agent of livestock or feedlot operator; and one copy shall be retained by the seller.
3. A certificate may be used once to either transfer livestock ownership or to move livestock to a specific destination. If the livestock are diverted to a destination other than that stated on the self-inspection certificate, the certificate is void. The owner or agent of livestock, or feedlot operator shall complete a new certificate and send both the voided and new certificates to the Department within 10 days after the end of the month in which the certificates are used or voided.
4. An owner or agent of livestock or feedlot operator shall use a self-inspection certificate only with a shipment of livestock matching the description for which the certificate is issued and only for the self-inspection issued date. If any of the information on the self-inspection certificate changes, the certificate is void and the owner or agent of livestock or feedlot operator shall complete a new certificate.
5. An altered, erased, completed but unused, or defaced self-inspection certificate is void. A voided certificate shall be returned to the Department within 10 days after the end of the month in which it is voided.
6. Upon request, certificates shall be returned to the Department by the owner or agent of livestock or feedlot operator. If an operation licensed for self-inspection is sold, leased, transferred, or otherwise disposed of, the owner or agent of livestock or feedlot operator shall notify the Department and return all self-inspection certificates to the Department within 30 days of the transaction.
7. If the owner or agent of livestock or feedlot operator cannot find an unused or used certificate, they must sign an affidavit provided by the Department verifying the certificate is lost and cannot be found. New certificates will not be issued until the signed affidavit has been received by the Department.

D. Sale of livestock. A seller shall document a sale by completing a self-inspection certificate as prescribed in subsection (C) and providing a bill of sale to the purchaser as required under A.R.S. § 3-1291.

E. Feedlot receiving form.

1. The operator of a feedlot shall document receipt of incoming cattle on a form obtained from the Department. The operator shall include the following information on the form:
a. Name of feedlot and location;
b. Month and year for which report is made;
c. Number of cattle received, date received, and name and address of owner;
d. Description of the cattle;
e. If not Arizona native cattle, the import permit and Certificate of Veterinary Inspection numbers;
f. If native Arizona cattle, self-inspection certificate number or Department inspection certificate number; and
g. Pen number to which cattle are initially assigned.
2. The operator shall return the completed form within 10 days after the end of the month of the reporting period.

F. Quarantine. Livestock under quarantine by the Department shall not be shipped or sold by use of a self-inspection certificate.

G. Violations. The Department shall process violations of this Section as prescribed under A.R.S. § 3-1203(D).

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-702 renumbered from Section R3-9-702 (Supp. 91-4). Section R3-2-702 repealed; new Section R3-2-702 adopted effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-703. Seasonal Self-inspection Certificate

Exhibition cattle, sheep, goats, and swine.

1. An applicant for a seasonal self-inspection certificate prescribed under A.R.S. § 3-1346 shall request a seasonal self-inspection certificate from the Department. The applicant shall provide the following information, as applicable:
   a. Name, mailing address, physical address if different from mailing address, telephone number, and email address;
   b. Name of 4-H or FFA group, and group leader;
   c. Physical description of livestock;
   d. Official identification of livestock, except for native cattle born and raised in Arizona;
   e. Permit number and Certificate of Veterinary Inspection number for livestock imported from another state;
   f. Name of seller and self-inspection certificate number or Department inspection certificate number for livestock purchased from an Arizona seller; and
   g. Signature and date of signature of the owner or lessee. If the owner or lessee is under 18 years of age, a signature of the parent or guardian and date of signature are required.
2. The Department employee who records the information required in subsection (1) shall advise the applicant of the required fee prescribed under A.R.S. § 3-1346(A). The Department shall issue a seasonal self-inspection certificate upon receipt of the fee.
3. An exhibitor shall provide the following information, as applicable, on a seasonal self-inspection certificate whenever livestock subject to seasonal self-inspection is moved or ownership is transferred:
   a. Name, address, telephone number, email address, and signature;
   b. Date of movement;
   c. Name of exhibition and location;
   d. Final disposition of the livestock (sale, death, or retention) and date of occurrence; and
   e. If the livestock is sold, name, address, and phone number of purchaser (person or slaughter plant).
4. The holder of a seasonal self-inspection certificate shall return the certificate to the Department within two weeks of the sale or slaughter of the livestock or at the end of the show season if the livestock is retained.

Historical Note

Adopted effective November 27, 1987 (Supp. 87-4). Section R3-2-703 renumbered from Section R3-9-703 (Supp. 91-4). Section R3-2-703 repealed; new Section R3-2-703 adopted effective February 4, 1998 (Supp. 98-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-704. Emergency Expired

Historical Note

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Section made by emergency rulemaking at 24 A.A.R. 3589, with an immediate effective date of December 13, 2018, valid for 180 days (Supp. 18-4). Emergency expired (Supp. 20-2).

R3-2-705. Repealed

Historical Note

Adopted effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

R3-2-706. Repealed

Historical Note

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

R3-2-707. Ownership and Hauling Certificate for Equines; Fees

The fee for a new, transferred, or replacement Ownership and Hauling Certificate for Equines as prescribed under A.R.S. §§ 3-1344(B) and 3-1345(B) is $10 per certificate.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3932, effective August 22, 2002 (Supp. 02-3).

R3-2-708. Equine Rescue Facility Registration

A. "Arizona Equine Rescue Standards" means the American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities, 2004 Edition. This material, which includes the Veterinary Checklist for Rescue/Retirement Facilities, is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007. A copy of this material may also be obtained from the American Association of Equine Practitioners web site at http://www.aaep.org/pdfs/rescue_retirement_guidelines.pdf. The American Association of Equine Practitioners is located at 4033 Iron Works Parkway, Lexington, Kentucky 40511.

B. An equine rescue facility shall pay the annual registration fee and file the following documents with the Department's Animal Services Division for the facility to be included on the Department's registry of equine rescue facilities:

1. An application form containing the facility's name, physical and mailing address, and contact person and the contact person's phone number and email address.
2. A copy of documents filed with the Arizona Corporation Commission demonstrating the facility's current status as a nonprofit corporation in good standing in this state.
3. A letter from a licensed veterinarian, dated within 15 days of filing, certifying that the facility is not inadequate with respect to any of the Arizona Equine Rescue Stan-

dards and attaching a signed copy of the completed Arizona Equine Rescue Standards' veterinary checklist.

C. Registration is valid for one year. Registration may be renewed annually by complying with subsection (B).

D. The annual registration fee is $75.

E. A nonprofit corporation owning multiple equine rescue facilities must file the letter and checklist described in subsection (B)(3) and pay the annual registration fee for each location it wants included on the registry.

F. The Department shall remove a facility from the registry if it determines that the facility is not presently incorporated as a nonprofit corporation in this state or is inadequate with respect to any of the Arizona Equine Rescue Standards.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 876, effective July 3, 2010 (Supp. 10-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-801. Definitions

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, effective on or before October 15, 2017, means the criteria for design, materials, construction and use of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department located at 1110 W. Washington St., Ste. 450, Phoenix, AZ 85007 or available for purchase online at https://www.3-a.org/.

"C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

"Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

"Fluid milk" means milk and any other product made by the addition of a substance to milk or to a liquid form of milk product if the milk or other product is produced, processed, distributed, sold or offered or exposed for sale for human consumption.

"Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates any fluid milk product.

"Food establishment" means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

"Frozen desserts mix" or "mix" means any frozen dessert before being frozen.

"Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

"Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization or Grade A raw milk.

"Plant" means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

"Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

"Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

"PMO" means the Grade A Pasteurized Milk Ordinance, 2023 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1110 W. Washington St., Suite 450, Phoenix, AZ 85007. A copy of the incorporated material may also be viewed at https://agriculture.az.gov/.

"Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

Historical Note

Former Regulations 1-11. Section R3-2-801 renumbered from R3-5-01 (Supp. 91-4). R3-2-801 renumbered to R3-2-803; new Section R3-2-801 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 2215, effective May 9, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 3030, effective September 30, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 889, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired. Amended by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3). Amended by final rulemaking at 22 A.A.R. 2169, effective October 2, 2016 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by exempt rulemaking at 20 A.A.R. 2841 (September 13, 2024), with an immediate effective date of August 27, 2024 (Supp. 24-3).

R3-2-802. Milk and Milk Products Standards

Unless specifically mentioned in A.R.S. Title 3, Chapter 4, Article 1, or in this Article, all milk and milk products, except frozen desserts, sold or distributed for human consumption shall meet the PMO standards for production, processing, storing, handling, and transportation.

Historical Note

Former Regulations 1, 2. Section R3-2-802 renumbered from R3-5-02 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4).

R3-2-803. Milk and Milk Products Labeling

A. The manufacturer or processor shall ensure that milk and milk products listed in A.R.S. § 3-601(10), and Sections 1 and 2 of the PMO are designated by the name of the product and shall conform to its definition.

B. The manufacturer or processor of milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, amended April 1, 2017. This CFR material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department.

C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor that has plants in other states shall use a code number or letter to designate the state in which a carton or closure is manufactured or processed. If a manufacturer or processor has a plant within Arizona, the Dairy Supervisor shall issue a code number or letter for each plant and shall keep a record of the number or letter issued. Manufacturers and processors shall include the Arizona code, 04, with the plant code assigned by the Dairy Supervisor.

D. If milk or milk products are manufactured or processed and packaged at a plant for other retailers and the container or closure is not labeled the same as the manufacturer's or processor's like product, the manufacturer or processor shall include the statement "Manufactured or Processed at (name and address of plant or code number or letter)" on the carton or closure. The carton or closure may also contain the statement, "Distributed by: (name of person or firm)."

E. Any person planning to use a new or modified label on a container shall submit the proposed label to the Dairy Supervisor for review.

1. If the proposed label does not meet labeling standards specified in subsection (B), the Dairy Supervisor shall note the required changes on the proposed label, and sign and return the proposed label to the applicant.
2. A person who requests additional time to use the inventory amounts of slow moving cartons or closures before using a modified label shall submit a written request to the Dairy Supervisor. The Dairy Supervisor may approve continued use of the existing cartons and closures if:
   a. The use does not present a public health issue, and
   b. The information on the cartons and closures is not misleading.

Historical Note

Former Regulations 1 - 21; Amended effective August 4, 1978 (Supp. 78-4). Section R3-2-803 renumbered from R3-5-03 (Supp. 91-4). R3-2-803 renumbered to R3-2-804; new Section R3-2-803 renumbered from R3-2-801 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-804. Trade Products

A. Any fluid trade product containing milk solids shall be regulated as a fluid milk product.

B. Advertising, display, and sale:

1. Any retail food store may submit its methods and techniques for the advertising, display, and sale of trade products and real products to the Dairy Supervisor to determine compliance with this Section.
2. No food establishment shall sell or provide any patron or employee, for use as food, any trade product or food whose main ingredient is a trade product, unless one of the following disclosures is posted for each trade product, in a prominent place on the premises, or is plainly visible on each menu where other food items are described:
   a. "_____ served here
      (brand or common name of trade product)
      instead of _____."
      (common name of dairy product)
   b. "Nondairy products served here."
3. No food establishment shall advertise or otherwise represent to the public that it serves, or uses in the preparation of a food, a real product when it actually serves or uses a trade product.

C. Labeling: Except as follows, all labels shall comply with the PMO and 21 CFR 101, 131, and 133.

1. The Dairy Supervisor shall approve a new or modified trade product label before the label is used. The applicant shall file a written request with duplicate copies of the proposed label and any supporting materials necessary to establish the truthfulness, reasonableness, relevancy, and completeness of the label.
2. Unless each ingredient of a trade product is homogenized or pasteurized, the whole product shall not be labeled or advertised as an homogenized or pasteurized product. Individual ingredients that are homogenized or pasteurized may be identified as homogenized or pasteurized in the listing of ingredients.
3. Except for combined ingredients constituting less than 1% of the whole product or unless each ingredient of a trade product qualifies as grade A, the whole product shall not be labeled or advertised as a grade A product. Ingredients that qualify as grade A may be identified as grade A in the listing of ingredients.
4. Any trade product produced outside the state and labeled as prescribed in R3-2-802 and R3-2-803, may be sold within the state provided that the product meets the requirements of A.R.S. §§ 3-663 and 3-665.

Historical Note

Former Regulations 1 - 8; Amended effective December 7, 1976 (Supp. 76-5). Correction, subsection (A)(2) through (H) omitted, Supp. 76-5 (Supp. 79-4). Section R3-2-804 renumbered from R3-5-04 (Supp. 91-4). R3-2-804 renumbered to R3-2-805; new Section R3-2-804 renumbered from R3-2-803 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-805. Grade A Raw Milk For Consumption

A. All cattle and other dairy animals from which Grade A raw milk is produced shall be tested and found free of tuberculosis before any milk is sold. All herds shall be tested for tuberculosis at least every 12 months. All cattle and other dairy animals from which Grade A raw milk is produced shall be tested and found free of brucellosis before any milk is sold, and shall be tested every 12 months or have negative brucellosis ring tests of the milk at least once each month, or both, as determined by the State Veterinarian.

B. Grade A raw milk shall be cooled immediately after completion of milking to 45° F or less and shall be maintained at that temperature until delivery.

C. Grade A raw milk shall be bottled on the farm where it is produced. Raw milk products authorized under A.R.S. § 3-606, except for hard cheeses aged 60 days or more as defined in 7 CFR 58.439, shall be processed, manufactured and packaged on the farm where the milk is produced. Bottling and capping shall be done in a sanitary manner on approved equipment. Hand-capping is prohibited. Caps and cap stock shall be kept in sanitary containers until used.

D. All vehicles used for the distribution of Grade A raw milk shall prominently display the distributor's name.

E. Grade A raw milk shall be labeled as prescribed in R3-2-803 and A.R.S. § 3-606.

Historical Note

Former Regulations 1, 2. Section R3-2-805 renumbered from R3-5-05 (Supp. 91-4). Section R3-2-805 repealed; new Section R3-2-805 renumbered from R3-2-804 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-806. Parlors and Milk Rooms

A. Construction Plans.

1. Any person constructing or extensively altering a parlor or milk room shall submit the plans and specifications to the Dairy Supervisor for written approval before work begins. The Dairy Supervisor shall approve or deny the plans within 10 business days.
2. Plans shall consist of a scaled plot design with elevations and pertinent dimensions.
3. Any deviations from the requirements in this Section and from approved plans and specifications may be made only after written approval of the Dairy Supervisor.

B. Site.

1. The parlor and milk room shall be located in a place free from contaminated surroundings.
2. Feed racks, calf pens, bull pens, hog pens, poultry pens, horse stables, horse corrals, and shelter sheds shall not be closer than 100 feet to the milk room or closer than 50 feet to the parlor.

C. Surroundings.

1. Dirt or unpaved corrals and unpaved lanes shall not be closer than 25 feet to the parlor or closer than 50 feet to the milk room; corrals shall be constructed to remove runoff from the lowest point of the grade.
2. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the parlor. This paved area shall be curbed sufficiently high enough to contain waste material and water used to clean this area.

D. Drains and waste disposal systems shall be adequate to drain the volume of water used in rinsing and cleaning, as well as the waste created by animals in the parlor. Instead of natural drainage, automatic pumps or other means shall be provided for drainage disposal.

E. Milk room.

1. The milk room shall consist of one or more rooms for the handling of the milk and the cleaning, sanitization, and storage of the milk-handling equipment. Hot and cold running water outlets shall be provided as needed for sanitation. There shall be a minimum of five feet between a farm milk tank at the widest point and the milk room wall where the wash vats are installed. Except for currently installed milk tanks, there shall be at least three feet between any farm tank or farm tank appurtenance and the milk room walls.
2. Passageway. The passageway between the milk room and parlor shall have at least a 3-foot clearance for ingress and egress. Equipment such as milk receivers, dump tanks, or coolers that are part of an enclosed milk line system may be installed in the passageway if:
   a. A 3-foot clearance is allowed for the walkway;
   b. Space is provided between walls and equipment to permit the disassembly of equipment for cleaning or inspection;
   c. The passageway between the parlor and the milk room may be closed at one end. The parlor may be separated from the passageway by a pipe rail fence if the slope of the parlor floor is away from the passageway. If the slope of the parlor floor is toward the passageway, a concrete wall between the passageway and parlor floor of at least 12 inches in height shall be provided.
   d. Rustless pipe sleeves with tight-fitting flanges and protective closures shall be installed where the milk lines, hoses for tankers, and wash lines go through the walls of the passageway.
3. Floors.
   a. The floors of the milk room, and passageway, if provided, shall be constructed of four-inch thick concrete, or other impervious material troweled smooth. The milk room floor shall slope at least 1/4 inch per 12 inches to a vented trapped drain. The passageway floor shall slope at least one inch per 10 feet toward a drain or gutter. All floor and wall junctions shall have at least a two-inch radius cove.
   b. Drainage from the milk room may be independent from or connected to the parlor drainage. Floor drains shall be vented, have a water trap, and a clean-out plug. All floor drains and pipes under the milk room and parlor floor shall meet all applicable plumbing codes.
4. Walls and ceilings.
   a. All walls and ceilings shall be constructed of a light colored, impervious material with a smooth finish. If concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete.
   b. The main ceiling height shall allow sufficient room for access to, and sampling from, the bulk milk storage tank.
5. Doors and windows.
   a. All opening windows shall have at least 16-inch mesh screen.
   b. Exterior doors of the milk room shall open outward, be solid, self-closing, and tight fitting. Any door from the passageway shall be a solid door, metal covered on both sides of the bottom half. Wooden door jambs or frames shall terminate six inches above the floor, and the concrete floor cove shall extend to the jambs or frames.
   c. All working areas in the milk room shall contain at least 30 foot-candles of natural and/or artificial lighting.
6. Ventilation. The milk room shall provide adequate ventilation to minimize condensation on ceilings, walls and equipment. Vents shall be protected from the penetration of insects, dust and other contaminants. The milk room shall contain one or more ceiling vents. Ceiling vents shall not be installed directly above bulk milk storage tanks.
7. Tanker loading area. A tanker-loading area, at least 10 feet by 12 feet, paved, curbed, and sloped to drain, shall be provided adjacent to the milk room where milk is transferred from a farm tank to a milk tanker. If a tanker is used instead of a farm tank, a tanker shelter shall be

provided that complies with the construction, light, drainage, and general maintenance requirements of the milk room.

8. Farm tank installations. All farm tanks for the cooling and storing of milk shall be installed in the milk room. Bulk milk tanks equipped with agitator shaft opening seals may, if approved by the Dairy Supervisor, be bulkheaded through a wall.

F. Parlor.

1. Floors.
   a. The floors shall be constructed of four-inch thick concrete or other, light-colored, impervious material, finished smooth. The floors, alleys, gutters, mangers, and curbs shall slope lengthwise toward a drain or gutter. The cow standing platform in the elevated stall parlor shall slope sufficiently to provide for adequate drainage and cleaning.
   b. Floor and wall junctions shall have at least a two-inch radius cove and shall be an integral part of the floor.
   c. The cow standing platform, litter alley, holding corral and concrete lane shall be treated to prevent slipping.
2. Walls. All walls shall be constructed of a light-colored, impervious material. If necessary, means shall be provided to prevent the entrance of swine, fowl and other prohibited animals. All walls shall be finished smooth on the inside with the top ledge rounded on open walls. If a parlor wall forms a part of the holding corral or an entrance or exit lane, it shall be finished smooth on the outside. If a concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete. In elevated stall parlors, the wall under the cow standing platform adjacent to the milking area shall be finished smooth and designed to prevent leakage.
3. Stalls. A tandem stall and a herringbone stall shall have a smooth, flat, non-absorbent splash panel behind each cow.
4. Light. Natural and/or artificial light shall be at least 30 foot-candles at the floor level and located to minimize shadows in the milking area.
5. Gutters.
   a. All parlors shall have gutters to catch the defecation of cows while in the stall and for any water used for rinsing.
   b. Pipe used for parlor gutter drainage shall be at least four inches in diameter and meet applicable plumbing codes.
6. Curbs.
   a. In elevated stall parlors, the cow standing platform shall be curbed on the side next to the milking alley and the curb shall be at least six inches in height with the top rounded to retain the elevated stall floor washings. This curb may be lowered to not less than two inches at the area where the milking machines are applied. Metal curbs shall be free of voids and sealed to stall and floor or wall.
   b. Floor level parlors shall contain a curb under the stanchion line at least six inches wide, 12 inches high from the stall floor, except if metal mangers are used the top of this curb shall be rounded.
7. Stanchions.
   a. The stanchion shall be metal or other impervious, easily cleanable material.
   b. Mangers and feed boxes in all types of parlors shall be constructed of impervious materials, finished smooth, and provided with drainage outlets at low points.
8. Ventilation. Adequate ventilation shall be provided in the parlor, holding corral, and wash area, if roofed.

G. Roof drainage from parlors and milk rooms shall not drain into a corral unless the corral is paved and properly drained.

H. If animals are fed in the parlor, feed storage facilities shall be provided. Feed storage rooms, when installed, shall be partitioned from the parlor and shall be fly and rodent proof. The feed discharge area of the bulk feed storage shall be concrete or other impervious material that is curbed and drained. Bulk feed may discharge directly into the parlor. A bulk feed tank located opposite the passageway shall be at least six feet from the milk room. Overhead feed storage is permissible if it is fly, rodent, and dust tight. Feed shall be conveyed to the manger or feed box in a tightly closed dust-free system. Overhead metal feed tanks may be used.

I. Facilities to store dairy supplies shall be provided. Only supplies that come in contact with the milk or milk contact surface of the milk-handling equipment may be stored in the milk room and shall be protected from toxic materials, vectors, and dust.

Historical Note

Former Regulations 1 - 11. Section R3-2-806 renumbered from R3-5-06 (Supp. 91-4). Section amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 22 A.A.R. 2169, effective October 2, 2016 (Supp. 16-3).

R3-2-807. Frozen Dessert Plant and Processing Standards

A. Plant and Processing Standards.

1. The plant area shall be clean, orderly and free from refuse, rubbish, smoke, dust, air pollution and strong or foul odors originating on the premises. A drainage system shall be provided for the rapid drainage of water away from the building. If unsatisfactory conditions occur in the plant area, with respect to smoke, dust, air pollution, or odors, provision shall be made to protect the frozen desserts and ingredients from contamination.
2. Sewage and industrial waste shall be disposed in accordance with the provisions of the state or county environmental laws. Refuse, unless in appropriate containers, shall not accumulate on the premises.
3. Roads, driveways, yards, and parking areas adjacent to the plant shall be paved or treated to prevent dust and shall be smooth and well drained to prevent accumulation of stagnant liquid.
4. Buildings.
   a. The building exterior and interior shall be kept clean and in good repair.
   b. In processing and packaging areas, outside doors, windows, skylights, transoms, or other openings shall be protected and operated to preclude the entrance of dust, insects, vermin, rodents, and other animals. Outside doors shall be self-closing wherever practical. Window sills on new construction shall slope inward at least 45-degrees. Outside conveyor openings and other outside openings shall be protected by doors, screens, flaps, fans, or tunnels. Pipes shall be sealed where they extend through exterior walls. Outside pipe openings shall be covered when not in use.

c. Rooms. All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be constructed to ensure clean and orderly operations.
   i. Boiler and tool rooms shall be separate from rooms where milk products are received, where processing and packaging is done, or where equipment, facilities, and containers are washed and stored.
   ii. Toilets and dressing rooms shall be conveniently located and toilets shall not open directly into any room where milk products, ingredients, or frozen desserts are handled, processed, packaged, or stored. Toilet and dressing room doors shall be self-closing. Toilets and dressing rooms shall be well vented to the outer air, and contain hand-washing facilities, hot and cold running water, soap, single-service towels or air dryers. Hand-washing signs shall be posted. Fixtures shall be kept clean and in good repair.
   iii. Rooms for receiving milk and other raw ingredients and materials shall be separated from the processing area to avoid contamination of frozen desserts in the processing operations, except that products in cans or other closed containers may be received and transferred to a cooler or other storage without being received in a separate room.
   iv. If tank truck deliveries of milk, milk products, or frozen desserts mix are made, other than occasional deliveries, a tank truck room large enough to accommodate the entire truck shall be provided with equipment for cleaning. A covered outside unloading pad may be used for truck tankers with filter dome vents, if washing and sanitizing facilities are provided. If a tank truck room is not located on the premises of an existing plant, facilities for washing and sanitizing tank trucks shall be provided at another location where the washing and sanitizing facility is free from dust and extreme weather conditions.
   v. Except for existing processing and packaging rooms, there shall be at least three feet clearance between installations and the wall to prevent overcrowding and to facilitate cleaning. Existing facilities not meeting this requirement shall be permitted if cleaning can be accomplished and permission is obtained from the Dairy Supervisor or the Dairy Supervisor's designee. All processing and packaging rooms shall be equipped with hand-washing facilities including hot and cold running water, soap, single-service towels, or air-dryer.
   vi. Refrigeration rooms and units shall be constructed of impervious material and shall be kept clean and sanitary.
   vii. Separate rooms shall be provided so that the manufacturing, processing, and packaging are separate from the cleaning and sterilizing of utensils and containers.
   viii. No person shall reside or sleep in a frozen desserts plant or in any room connected with it. No animal shall be kept or permitted in a frozen desserts plant.

d. Walls and ceilings shall be constructed of smooth, washable, impervious material. They shall be light-colored, kept clean and sanitary, and refinished when discolored. A darker color material may be used to a height not exceeding 60 inches from the floor.

e. Floors shall be an impervious, smooth-surfaced material that may be flushed clean with water. Except for hardening rooms, floors shall slope 3/16 to 1/4 inch per foot to one or more trapped outlets. No open channel drainage is permitted in new construction or in extensive remodeling of existing plants. Floor drains are not required in freezers used for storing frozen desserts or frozen ingredients. However, the floors shall be sloped to drain to at least one exit and shall be kept clean. Floors in new construction or extensive remodeling shall be joined and coved with the walls to form water-tight joints. Smooth wood floors may only be permitted in rooms where there will be no spillage of product or ingredients, such as rooms where wrapped or packaged frozen products are packed in multiple-pack containers. Toilets and dressing rooms shall have impervious floors and smooth walls.

f. Plumbing shall be installed to prevent back-up of sewage or odors into the plant.

g. All rooms and compartments, including storage space for materials, ingredients, and packages, and toilets and dressing rooms, shall be ventilated to maintain sanitary conditions, and to minimize or eliminate condensation and odors.

h. Lighting, whether natural or artificial, shall be well distributed in all rooms and compartments. Light bulbs and fluorescent tubes shall be protected so that broken glass cannot fall into any product or equipment.
   i. Rooms where frozen desserts are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 footcandles of light on all working surfaces;
   ii. Areas where dairy products are examined for condition and quality shall have at least 50 footcandles of light; and
   iii. All other rooms shall have at least 20 footcandles of light 30 inches above the floor.

i. Containers for collecting and holding waste other than dry waste paper and other dry packaging material shall be constructed of metal or other impervious material, covered with tight-fitting lids or covers, and emptied or disposed of daily or at least once during the shift. Clothing, tools, equipment, and other material not used with the frozen desserts operations shall not accumulate in the work areas or in the storage rooms.

j. A room or other space separate from any room or space where milk products or frozen desserts are received, handled, processed, packaged, or stored, shall be provided where employees may change and store clothing. This area shall contain hand-washing

facilities, with hot and cold running water, soap or other detergents, and single-service towels or air dryers. Self-closing containers shall be provided for used towels and other wastes.

k. Approval of plans. Plans shall be submitted to the Dairy Supervisor, for any new or remodeled frozen dessert manufacturer, to be reviewed for compliance with this Section. The Dairy Supervisor may allow variances to the requirements in this Section, if protection from contamination is provided for all products handled.

5. Water and steam.
   a. Potable hot and cold water shall be available in sufficient quantity for all plant operations and facilities. Non-potable water may be used for boiler feed and condenser water, if the water lines are separated from the water lines carrying the potable water supply and the equipment is constructed to preclude contamination of any product or product contact surface. If water for washing frozen desserts equipment and utensils and for use in rehydration or as an ingredient in any frozen desserts is obtained from other than a regulated municipal supply, a bacteriological examination shall be made of the water supply at least once every six months by a laboratory acceptable to the Dairy regulatory program to determine potability. If the examination indicates contamination of the water supply, a device shall be installed to eliminate the contamination.
   b. If steam is used, it shall be provided in sufficient volume and pressure for the operation of equipment or for sterilization, or both. Steam that comes in contact with frozen desserts, ingredients, or with the product contact surface, shall be steam of culinary quality as prescribed in Appendix H, Part III, Culinary Steam – Milk and Milk Products, of the PMO.
6. Equipment and utensils.
   a. New equipment shall meet applicable 3-A Sanitary Standards. All equipment, including connections, coming in contact with frozen desserts or ingredients during processing, manufacturing, handling, or packaging, shall be made of stainless steel. No equipment shall be permitted that is rusted, corroded, or in any other condition that may result in contamination of the frozen desserts. Non-metallic parts with product contact surfaces shall consist of material that meets 3-A Sanitary Standards for Plastic or Rubber and Rubber-like Materials or shall be of plastic approved by the United States Food and Drug Administration. Equipment, apparatus, and piping shall be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Stationary equipment, including welded sanitary lines and apparatus that permit in-place-cleaning, may be used if prior approval from the Dairy Supervisor has been obtained. C-I-P piping and welded sanitary pipeline systems shall be permitted if engineered and installed according to 3-A Accepted Practices for Permanently Installed Sanitary Product and Solution Pipelines and Cleaning Systems. If rigid pipelines are not practical, plastic pipelines listed in the 3-A Accepted Practices may be used. Product pumps shall be sanitary and easily dismantled for cleaning or shall be constructed to allow C-I-P procedures. All parts of interior surfaces of equipment, pipes (except C-I-P piping), or fittings, including valves and connections shall be accessible for inspection. The Dairy Supervisor may require other equipment, apparatus or piping if stationary equipment, apparatus or piping cannot or is not being effectively cleaned-in-place.
   b. Equipment for storage and distribution of liquid sweetening agents shall be constructed of metals, alloys, or other material that will withstand corrosive action by the ingredient. The equipment and the ingredients shall be protected from contamination.
   c. Pasteurizing equipment shall meet the standards prescribed in the PMO and 3-A Accepted Practices for Sanitary Construction, Installation, Testing and Operation of High-Temperature-Short-Time Pasteurizers and 3-A Sanitary Standards for Non-Coiled Type Batch Pasteurizers. Batch-type pasteurizers shall be provided with close-coupled outlet valves protected against leakage and shall be equipped with thermometers that record the information of each day's operation on separate charts. Air space thermometers and indicating thermometers shall be provided to check the recording thermometers. The recording thermometer chart shall contain the date, the identity of the pasteurizing number, the batch and product name, and the signature of the employee responsible for this information. The record shall be kept on file at the plant for at least six months. The accuracy of the recording thermometer shall be checked daily using the indicating thermometer and the time and temperature shall be documented on the recording chart. Chart recorders and thermometers for batch pasteurizers shall be tested and sealed by the Dairy Supervisor or the Supervisor's designee after testing and seals shall not be removed without immediately notifying the Dairy Supervisor or the Supervisor's designee.
   d. Every plant shall contain hardening rooms, refrigerating rooms, or refrigerated cabinets with space for storage of frozen desserts and perishable ingredients.
   e. All utensils used in the receiving, storing, processing, manufacturing, packaging, and handling of frozen desserts or any ingredients shall be of smooth, stainless steel, or plastic listed in the 3-A Accepted Practices and shall have flush seams. Utensils that are badly worn, rusted, or corroded or that cannot be rendered clean and sanitary by washing shall not be used. Lead solder shall not come in contact with milk or milk products or frozen desserts.
7. Cleaning and sanitizing.
   a. Cleaning and sanitizing. Equipment, sanitary piping and utensils used in receiving, storing, processing, manufacturing, packaging, and handling frozen desserts and ingredients, and all product contact surfaces of homogenizers, high pressure pumps, packing glands on agitators, pumps and vats, and lines shall be kept clean. Before use, all equipment coming in contact with milk products or frozen desserts shall have a bactericidal or sanitizing treatment. Equipment not designed for C-I-P cleaning shall be disassembled, thoroughly cleaned and sanitized. Biodegradable dairy cleaners, wetting agents,

detergents, sanitizing agents, or other similar material that does not adversely affect or contaminate the frozen desserts or ingredients may be used. Steel wool or metal sponges shall not be used to clean any equipment or utensils with product contact surfaces. C-I-P cleaning shall be used only on equipment and pipeline systems designed, engineered, and installed for that type of cleaning. Other equipment and areas in the plant shall be thoroughly cleaned with appropriate methods that prevent potential contamination of ingredients, packaging and frozen desserts. Exhaust stacks, elevators and elevator pits, conveyors and similar facilities shall be inspected and cleaned regularly.

b. Equipment shall be sanitized by using one of the following methods:
   i. Using 180° F water for at least two minutes.
   ii. Using steam under pressure for at least two minutes or until all parts of the equipment being sanitized have reached 180° F, or the condensate off the equipment remains at 180° F for at least two minutes.
   iii. Using chlorine with a residual of at least 50 ppm after one minute contact with equipment, or if sprayed, with a residual of at least 100 ppm after five minutes.
   iv. Using any other sanitizing substance prescribed in Appendix F of the PMO.

8. Pasteurization and cooling.
   a. All frozen desserts mix, except for flavoring agents used in frozen desserts, shall be pasteurized.
   b. Frozen desserts mix shall be pasteurized by heating every particle as described in Table 1.
   c. Continuous flow pasteurizers, high-temperature-short-time and higher-heat-shorter-time, shall have all public health controls sealed against access and alteration. The seals shall be applied by the Dairy Supervisor or the Supervisor's designee after testing and shall not be removed without immediately notifying the Dairy Supervisor or the Supervisor's designee. The system shall be designed to meet the requirements of the PMO.
   d. After pasteurization all mix shall be cooled immediately to 45° F or less and shall be maintained at that temperature until frozen. Milk, cream, and other fluid milk products other than sterilized, evaporated or sweetened condensed milk in hermetically sealed containers shall be stored at 45° F or less.
      i. Refrigerated vehicles or approved insulated containers shall be used when transporting frozen desserts mix from the manufacturing or other plant to a retail manufacturer, and
      ii. Mix shall be moved from coolers or refrigeration units in a manufacturing plant to freezers by using pipes, tubing, or other means listed in the Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants section of the 3-A Accepted Practices.
9. Storage.
   a. Utensils and equipment. Utensils and portable equipment used in processing, handling, or packaging of frozen desserts shall be stored above the floor in clean, dry locations and in a self-draining position on racks constructed of impervious, corrosion-resistant material.
   b. Supplies and containers. Whenever possible, supplies shall be kept in a room separate from the processing, handling, and packaging of frozen desserts and under conditions that result in keeping the materials clean and free from dust, moisture, insects, rodents, or other possible contamination. Supplies shall be arranged to permit cleaning of the area and easy inspection and access. Insecticides and rodenticides shall be plainly labeled, segregated, and stored in a separate room or cabinet away from the edible material or packaging supplies. Caps, parchment papers, wrappers, liners, gaskets, and single-service sticks, spoons, covers, and containers for frozen desserts or ingredients shall be stored only in sanitary tubes, wrappings, or cartons and kept in a clean, dry place until used and shall be handled in a sanitary manner.
   c. Raw milk products. Raw products for use in frozen desserts that are conducive to bacterial growth shall be handled and stored to minimize bacterial growth. When stored, raw products shall be maintained at 45° F or lower until processing commences.
   d. Non-refrigerated products. Products such as non-fat dry milk and other frozen desserts ingredients that do not require refrigeration for proper storing shall be placed in dry storage to be easily accessible for inspection and removal, and for adequate cleaning of the room. Dunnage, pallets or other similar method of elevation shall be used. Frozen desserts or ingredients shall not be stored with any product that would damage them or impair their quality. Opened containers of ingredients shall be protected from contamination.
   e. Refrigerated products. All products that require refrigeration shall, except as otherwise specified, be stored under conditions of temperature and humidity that best maintain quality and condition. Products shall not be stored directly on wet floors or be exposed to foreign odors or conditions such as dripping or condensation that may cause package or product damage.
10. Notification of change in products to be manufactured. Any person manufacturing only frozen desserts with butterfat, or only frozen desserts with fats other than butterfat, and uses the other type of fat shall first notify the Dairy Supervisor.
11. Clearing lines and equipment. If the same equipment is used for processing, pasteurizing, and packaging frozen desserts made with dairy products and frozen desserts made with vegetable fats, oils, or proteins, any remaining product shall be completely removed from the lines and equipment and sanitized before introducing another product into the lines and equipment. All equipment and lines shall be sanitized either at the end or beginning of each day's operations.
12. Packaging and containers.
   a. Frozen desserts shall be packaged in commercial containers using packaging material that protects the product from contamination. The packaging, cutting, molding, dispensing, and other handling or preparation of frozen desserts and their ingredients shall be in a sanitary manner. Frozen dessert con-

tainers shall be filled at the place of pasteurization using approved mechanical equipment. Existing manual processes may be permitted if done in a manner that prevents all contact surface contamination and is approved by the Dairy Supervisor.

b. Multi-use containers for frozen desserts shall be kept clean and dry. If used for transporting frozen desserts, the containers shall be:
   i. Rinsed immediately after emptying,
   ii. Cleaned upon return to the plant, and
   iii. Protected from contamination during storage.

c. Metal cans and containers shall be free from rust and corrosion.

d. Paper and plastic containers, liners, covers, or other materials coming in contact with frozen desserts shall be free from contamination.

e. Single-service containers shall not be reused.

B. Personnel.

1. Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. Employees shall keep their hands clean and follow good hygienic practices while on duty. Expectorating or using tobacco in rooms or compartments where frozen desserts or ingredients are exposed is prohibited. Clean, white, or light-colored, washable outer garments shall be worn by all employees engaged in handling dairy products, mix or frozen desserts. Hair coverings for head and facial hair shall be worn by all employees engaged in the processing, pasteurizing, packaging, handling, and storage of frozen desserts, product containers, and utensils.
2. Frozen desserts shall be handled so that there is no direct contact between an employee's hands and the product.
3. A person who has a discharging or infected wound, sore or lesion on hands, arms or other exposed portions of the body shall not work in any plant processing or packaging room or in any capacity resulting in contact with milk products or frozen desserts or equipment used in the processing or handling of milk products or frozen desserts. An employee returning to work following illness from a communicable disease shall provide a certificate from a physician attesting to the employee's complete recovery before processing or handling milk products or frozen desserts.

C. Quality standards.

1. Milk products used in the manufacture of frozen desserts shall meet the following standards:

Product	Standard Plate Count Not to Exceed
Raw Milk	500,000 per ml.
Pasteurized Milk	50,000 per ml.
Raw Cream	500,000 per ml.
Pasteurized Cream	100,000 per ml.

2. Butter, 80% cream, plastic cream, mixtures of butterfat, sugar or sweetening agent, moisture and flavoring, condensed milk, mixes and all other similar products shall meet the following standards:

Bacterial Standards	Not to Exceed
Standard Plate Count	50,000 per gram
Coliform Count	20 per gram
Yeast Count	50 per gram
Mold Count	50 per gram

3. Powdered non-fat dry milk, dry whey, and dry buttermilk shall meet the PMO standards.
4. Fats and oils other than from milk shall meet the standards of the United States Food, Drug and Cosmetic Act as amended, or those of any applicable state regulation for fats and oils of food grade standards.
5. Frozen desserts in broken or opened containers or in containers from which the product has been partially used may be returned to the plant for examination but shall not be used or sold for making frozen desserts.
6. All reconstituted frozen desserts shall be pasteurized before packaging.

D. Labeling.

1. All packages of frozen desserts, including cans or other containers of frozen desserts mix but not including frozen desserts packaged in accordance with a customer's request and in the presence of the customer, shall be labeled as prescribed in the federal Food, Drug and Cosmetic Act, as amended.
2. Each frozen dessert package shall contain:
   a. The code number assigned by the Dairy Supervisor, identifying the specific manufacturing plant; or
   b. The name and address of the frozen dessert manufacturer.

E. License suspension. The Dairy Supervisor may suspend the license of a frozen dessert plant whenever the bacteria count, coliform determination, yeast or mold count exceeds the quality standards for frozen desserts in three out of the last five samples taken on separate days. In addition, the Dairy Supervisor may suspend the permit of a frozen dessert plant for failure to comply with any of the provisions of this Section.

Historical Note
Adopted effective December 7, 1976 (Supp. 76-5). Amended effective December 5, 1977 (Supp. 77-6). Section R3-2-807 renumbered from R3-5-07 (Supp. 91-4). Amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table 1. Pasteurization

Batch (Vat) Pasteurization	
Temperature	**Time**
69ºC (155ºF)	30 minutes
Continuous Flow (HTST) Pasteurization	
Temperature	**Time**
80ºC (175ºF)	25 seconds
83ºC (180ºF)	15 seconds
Continuous Flow (HHST) Pasteurization	
89ºC (191°F)	1.0 seconds
90ºC (194°F)	0.5 seconds
94ºC (201°F)	0.10 seconds
96ºC (204°F)	0.05 seconds
100ºC (212°F)	0.01 seconds

Historical Note
Table 1 made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Table 1 heading added for clarity (Supp. 21-3).

R3-2-808. Frozen Desserts Reconstituted from Powdered Mixes

Except for R3-2-807(A)(8), retail establishments that reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the requirements prescribed in R3-2-807 and the following standards:

1. All equipment, containers, and utensils shall be washed and air-dried after each use and shall be sanitized before each use, in accordance with the sanitation standards established in subsection R3-2-807(A)(7)(b).
2. When not in use, all equipment, utensils, and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents, or other possible sources of contamination.
3. Excess quantities of the reconstituted frozen dessert shall not be made from the powdered mix in advance and stored outside the dispensing machine.
4. Frozen desserts shall be reconstituted according to the directions provided by the powdered mix manufacturer.

Historical Note

Adopted effective May 11, 1977 (Supp. 77-3). Section R3-2-808 renumbered from R3-5-08 (Supp. 91-4). Section R3-2-808 renumbered to Section R3-2-809; new Section R3-2-808 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-809. Medicinal, Chemical, and Radioactive Residues in Milk

A. All dairies shall comply with the following procedures to exclude medicinal, chemical, and radioactive residues from milk intended for human consumption:

1. Identify all cows that have been treated with or have consumed medicinal, chemical, and radioactive agents capable of being secreted in milk;
2. Maintain a written record of the date of treatment, type, and quantity of the medicine or chemical administered to each cow;
3. Milk all treated cows last, or with separate equipment to prevent contamination of the wholesome milk supply;
4. Clean and sanitize all equipment, utensils, and containers used in the handling of milk from the treated cows before the equipment is used in the handling of any milk intended for human consumption; and
5. Discard all milk from the treated cows for the period of time recommended by the attending veterinarian or as indicated on the package or label of the medicine used in the treatment of the cow.

B. Enforcement.

1. When the residue of a chemical, medicinal, or radioactive agent is found in the milk of a dairy and the Dairy Supervisor determines that the residue may be deleterious to human health, the Director shall immediately suspend the dairy from further selling, offering for sale, or distributing milk for human consumption until:
   a. The Dairy Supervisor determines that the practice causing the contamination of the milk has been corrected and the dairy is in compliance with the procedures established in subsection (A);
   b. Any milk that has not been excluded from human consumption as required by subsection (A) is appropriately discarded; and
   c. The first milk shipment following suspension indicates negative test results for medicinal, chemical, or radioactive residues.
2. If the Dairy Supervisor determines that a dairy is not in compliance with the procedures established in subsection (A), the Dairy Supervisor may suspend the dairy until the prescribed procedures are observed.

Historical Note

Section R3-2-809 renumbered from R3-2-808 and amended effective December 2, 1998 (Supp. 98-4).

R3-2-810. License Fees

During fiscal year 2024, an applicant shall pay the following fee to obtain or renew a dairy license:

1. For a license to operate a milk distributing plant or business: $300 plus $2,500 per pasteurizer.
2. For a license to operate a manufacturing milk processing plant: $100.
3. For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: $150 plus $2,500 per pasteurizer.
4. For a license to engage in the business of producer-distributor: $150.
5. For a license to engage in the business of producer-manufacturer: $25.
6. For a license to engage in the manufacture of trade products: $100.
7. For a license to engage in the business of selling at wholesale milk or dairy products, or both: $100.
8. For a license to sample milk or cream: an initial fee of $50 and a renewal fee of $30.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2017 (August 12, 2022), effective September 24, 2022 (Supp. 22-3). Amended by exempt rulemaking at 29 A.A.R. 3483 (November 3, 2023), effective October 30, 2023 (Supp. 23-4).

R3-2-811. Dairy Farm Permit

A. A dairy farm, as defined in the PMO, may apply for a PMO milk producer permit by submitting the following information about the dairy farm on a form provided by the Department:

1. Legal name,
2. Physical and mailing address,
3. Telephone number,
4. Owner's name,

5. Herd size,
6. Daily milk production,
7. Water source,
8. Waste water disposal system,
9. Number of bulk storage tanks, and
10. Certification that the dairy farm facilities comply with Grade A requirements.

B. An applicant for a dairy farm permit shall demonstrate compliance with the minimum standards set out in the PMO by a Department inspection.

C. A permittee shall maintain compliance with the minimum standards set out in the PMO and shall be subject to inspection by the Department in accordance with the PMO.

D. The Department may suspend a permit for a permittee's failure to comply with the minimum standards and may revoke a permit if the permittee fails to correct deficiencies within a reasonable time.

E. Dairy farm permits are not transferable.

Historical Note

New Section made by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired; new Section made by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3).

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-901. Definitions and Interpretation Guidance

A. In addition to the definitions provided in A.R.S. §§ 3-701, 3-703 and 3-704, the following shall apply to this Article:

1. "Business owner or operator" means any person who owns ten percent or more of a business, or a person who controls the operations of a business.
2. "Check" means an individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A "check" is considered to be lower in quality than a "dirty."
3. "Dirty" means a shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.
4. "Egg-laying hen" means any hen that produces eggs for human consumption.
5. "Egg products":
   a. Means eggs, in raw or pasteurized form, that are removed from the shell in a liquid, frozen, dried, or freeze-dried state, but are not fully cooked.
   b. May consist of whole eggs, yolks, whites, or any blend of yolk and white, with or without additives, if eggs are the main ingredient.
6. "Housed in a cage-free manner" means confined in a housing system that provides egg-laying hens with all of the following:
   a. The amount of usable floor space per egg-laying hen equal to or greater than that required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing.
   b. An indoor or outdoor controlled environment, which can consist of multi-tiered aviaries, partially-slatted systems, single-level all litter floor systems, or other systems, and which allows egg-laying hens to have:
      i. Unrestricted freedom to roam;
      ii. An environment that allows them to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas; and
      iii. An environment in which farm employees can provide care while standing within the hens' usable floor space.
7. "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.
8. "Lot" means any quantity of two or more eggs.
9. "Lot Consolidation" means the removal of damaged eggs from cartons labeled by a producer or producer dealer and replacement of the damaged eggs with eggs of the same grade, size, brand, expiration date and source.
10. "Multi-tiered aviaries" means cage-free housing systems in which egg-laying hens have unfettered access to multiple elevated flat platforms that provide the egg-laying hens with usable floor space both on top of and underneath the platforms.
11. "Partially-slatted systems" means cage-free housing systems in which egg-laying hens have unfettered access to elevated flat platforms under which manure drops through the flooring to a pit or litter removal belt below.
12. "Pasteurized in-shell eggs" means eggs that have been pasteurized with the shell intact by any method approved by the Federal Food and Drug Administration or the department.
13. "Repacking" means changing the identity of a lot of eggs by removing them from the original container labeled by a packer and placing them into another container not labeled by the packer at the point of origin with the same grade, size, lot number, source and/or brand.
14. "Single-level all-litter floor systems" means cage-free housing systems bedded with litter, in which egg-laying hens have limited or no access to elevated flat platforms.
15. "Spot-check" sample means any sample less than a representative sample described in the chart in R3-2-903(B).
16. "Ultimate consumer" means a person consuming eggs or egg products and a restaurant using eggs in the preparation of a meal.
17. "Usable floor space" means the total square footage of floor space provided to each egg-laying hen, as calculated by dividing the total square footage of floor space provided to the egg-laying hens in an enclosure by the number of egg-laying hens in that enclosure. "Usable floor space" shall include both ground space and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.
18. "UEP" means United Egg Producers.
19. "United Egg Producers Animal Husbandry Guidelines" means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition. This material is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.
20. "United Egg Producers Certified" means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.

21. "United Egg Producers Certified logo" means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.
22. "United Egg Producers Cage Free Certified logo" means the official symbol and accompanying language used to identify cage-free eggs produced by United Egg Producers Certified companies.

B. Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

C. Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

D. The word "includes" and its derivatives means "includes, but is not limited to" and corresponding derivative expressions.

Historical Note

Former Rule 1; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-01 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-901 (Supp. 82-1). Section R3-6-101 renumbered to R3-2-901 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 802 (April 22, 2022), effective October 1, 2022 (Supp. 22-2).

R3-2-902. Standards, Grades, and Weight Classes for Eggs; Pasteurized In-Shell Eggs

A. Standards for Eggs. All standards, grades, and weight classes of quality for chicken eggs in the shell shall meet the grades for eggs as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the United States Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Ave., S.W., Washington, DC 20250-0259, or online at www.ams.usda.gov/grades-standards/eggs. "AMS" means Agricultural Marketing Service, United States Department of Agriculture.

B. Standards for Pasteurized In-Shell Eggs. It is unlawful for a producer, producer dealer, dealer, or retailer to sell, offer for sale, or expose for sale pasteurized in-shell eggs that are packed for human consumption unless both of the following conditions are met:

1. Quality and weight classes:
   a. The eggs used to produce pasteurized in-shell eggs shall meet Consumer Grades A or AA and Weight Classes for Eggs of subsection (A).
   b. At destination:
      i. Pasteurized in-shell eggs shall contain no more than 7 percent (9 percent for Jumbo size) Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.
      ii. In lots of two or more cases, no individual case may exceed 10 percent Checks.
   c. Pasteurized in-shell eggs shall meet the weight classes as indicated in Table I. Weight Classes for Pasteurized In-Shell Eggs.
2. Labeling requirements. Except as provided in subsection (B)(2)(j), it is unlawful for an egg producer, producer dealer, dealer or retailer to sell, offer for sale, or expose for sale pasteurized in-shell eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled on one outside top, side, or end with all of the following:
   a. The consumer container is conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning as approved by the Department. Consumer container labeling that complies with the safe handling instructions required by Section 101.17 of Title 21 of the Code of Federal Regulations shall be deemed to comply with this subsection.
   b. The consumer container is conspicuously labeled "produced from" in conjunction with the appropriate consumer grade in letters no smaller than 1/2 size of the labeled consumer grade. The use of the consumer grade without the qualifier "produced from" is not permitted.
   c. The words "Best By", or "Use by" immediately followed by the month and day in bold type. Months shall be abbreviated Jan, Feb, Mar, Apr, May, Jun, Jul, Aug, Sep, Oct, Nov or Dec. The "Use by," or "Best before" date shall not exceed 75 days from the date on which the pasteurized in-shell eggs were pasteurized, excluding the date of pasteurization. Processors of in-shell eggs that subject the eggs to the pasteurization process shall establish a sell-by date by completion of an appropriate shelf stability study that includes public health and safety criteria. The processor shall retain the study on file at the processing plant and make it available to the Department upon request.
   d. If the pasteurized in-shell eggs are repacked, the original "Best By" or "Use by" date shall apply.
   e. A Julian pack date which is the consecutive day of the year on which the pasteurized in-shell eggs were pasteurized.
   f. The identification number of the plant of origin.
   g. A conspicuous identification of the eggs as "pasteurized."
   h. All state and federal labeling requirements.
   i. This Section does not apply to pasteurized in-shell eggs that are packaged for export.
   j. Subsection (B) does not apply to pasteurized in-shell eggs that are packaged for interstate commerce or pasteurized in-shell eggs that are packaged for military sales if exported to a state or federal agency that requires a different format for the sell-by or best-if-used-by date on pasteurized in-shell eggs, and the processor is utilizing that format.

Historical Note

Former Rule 2; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-02 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-902 (Supp. 82-1). Section R3-6-102

renumbered to R3-2-902 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 892, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table I. Weight Classes for Pasteurized In-Shell Eggs

Weight Classes for Pasteurized In-Shell Eggs			
Size or weight class	Minimum net weight per dozen (ounces)	Minimum net weight 30 per dozen (pounds)	Minimum net weight for individual eggs at rate per dozen (ounces)
Jumbo Extra large Large Medium	30 27 24 21	56 50 1/2 45 39 1/2	29 26 23 20
*A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 percent.			

Historical Note
Table I. Weight Classes for Pasteurized In-Shell Eggs made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-903. Sampling: Schedule and Methods for Evidence

A. An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907.

B. Representative egg sampling, under A.R.S. § 3-710(G), shall be based on Table II. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907 shall receive a warning notice hold tag.

1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
2. When loose eggs are out of the case, the sample shall be based on a carton.
3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall convert the quantity of eggs to the equivalent 30-dozen-case basis to establish the official sample size.

Historical Note
Former Rule 3; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-03 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-903 (Supp. 82-1). Section R3-6-103 renumbered to R3-2-903 (Supp. 91-4). Section repealed, new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by final rulemaking at 28 A.A.R. 802 (April 22, 2022), effective October 1, 2022 (Supp. 22-2).

Table II. Minimum Number of Cases and Cartons Comprising a Representative Sample

Lot size of cartons	Minimum eggs for inspection	Lot size of 30 doz. per case	Minimum cases for inspection[1]
1 - 4 cartons	All	1 case	1 case
5 - 30 cartons inclusive	50	2 - 10 cases inclusive	2 cases
31 - 120 cartons inclusive	100	11 - 25 cases inclusive	3 cases
120 - 210 cartons inclusive	200	26 - 50 cases inclusive	4 cases
211 - 315 cartons inclusive	300	51 - 100 cases inclusive	5 cases
		101 - 200 cases inclusive	8 cases
		201 - 300 cases inclusive	11 cases
		301 - 400 cases inclusive	13 cases
		401 - 500 cases inclusive	14 cases
		501 - 600 cases inclusive	16 cases
		For each additional 50 cases or fraction of a case in excess of 600 cases	1 case

[1]An inspector shall take 100 eggs from each case for inspection.

Historical Note
Table II was made under new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3); it was last amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). The table and historical notes were moved out of R3-2-903 to maintain the numbering codification scheme of tables made at 26 A.A.R. 781 (Supp. 20-2).

R3-2-904. Quarterly Report Periods

Quarterly reports are due as prescribed in A.R.S. § 3-716(D). The quarterly report periods for inspection fees are:

1. July 1 to September 30,
2. October 1 to December 31,
3. January 1 to March 31, and
4. April 1 to June 30.

Historical Note

Former Rule 4; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-04 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-904 (Supp. 82-1). Section R3-6-104 renumbered to R3-2-904 (Supp. 91-4). Section repealed, new Section R3-2-904 renumbered from R3-2-907 and amended effective July 13, 1995 (Supp. 95-3).

R3-2-905. Inspection Fee Rate

A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).

B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).

C. For scheduled continuous grading, certification, and inspection services. The following rates apply to continuous grading service on a resident basis and continuous grading service on a nonresident basis per grader:

1. Regular rate: $38.00/hour;
2. Overtime rate: $57.00/hour;
3. Holiday rate: $58.00/hour.

D. For plant survey, unscheduled temporary, certification, auditing and appeal grading services. The following rates apply to temporary and auditing service per grader:

1. Regular rate: $57.00/hour;
2. Overtime rate: $85.00/hour;
3. Holiday rate: $87.00/hour.

Historical Note

Former Rule 5; Former Section R3-6-05 renumbered as Section R3-2-905 (Supp. 82-1). Section R3-6-105 renumbered to R3-2-905 (Supp. 91-4). Section repealed, new Section R3-2-905 renumbered from R3-2-908 and amended effective July 13, 1995 (Supp. 95-3). Amended by emergency rulemaking at 12 A.A.R. 4063, effective October 1, 2006 for 180 days (Supp. 06-4). Emergency renewed at 13 A.A.R. 1509, effective April 9, 2007 for 180 days (Supp. 07-2). Amended by final rulemaking at 13 A.A.R 1639, effective June 30, 2007 (Supp. 07-2). Amended by final rulemaking at 28 A.A.R. 802 (April 22, 2022), effective October 1, 2022 (Supp. 22-2).

R3-2-906. Violations and Penalties

A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:

1. Category A:
   a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
   b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
   c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
   d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container. Selling pasteurized in-shell eggs without or past the "Best By" or "Use by" date;
   e. Failing to maintain records and reports required by this Article;
   f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, as required under R3-2-907;
   g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
   h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
   i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products;
   j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907;
   k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907.
2. Category B:
   a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(13); or
   b. Advertising, representing, or selling out-of-state eggs as local eggs.
3. Category C:
   a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
   b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower;
   c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F; or
   d. Failing to meet the sanitary standards egg processing of R3-2-908.

B. Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.

C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is in Table III.

Historical Note

Former Rule 6; Amended effective February 19, 1982. Former Section R3-6-06 renumbered as Section R3-2-906 (Supp. 82-1). Section R3-6-106 renumbered to R3-2-906 (Supp. 91-4). Former Section R3-2-906 renumbered to R3-2-903, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4058, effective October 7, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 802 (April 22, 2022), effective

October 1, 2022 (Supp. 22-2).

Table III. Violations and Penalties

Number of Violations	Category A	Category B	Category C
1	Warning	Warning	Warning
2	$50	$50	$100
3	$100	$100	$200
4		$150	$400
5		$200	$500
6		$250	
7		$300	

Historical Note
Table III made by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Heading added for clarity (Supp. 21-3).

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

A. Until September 30, 2022, all egg-laying hens in this state shall be raised according to UEP Animal Husbandry Guidelines.

B. Until September 30, 2022, all eggs sold in this state produced by hens shall be from hens raised according to the UEP Animal Husbandry Guidelines. All eggs shall display the UEP Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.

C. Beginning October 1, 2022, all egg-laying hens in this state shall be housed in accordance with the UEP Animal Husbandry Guidelines and shall be provided with no less than one square foot of usable floor space per egg-laying hen.

D. Beginning October 1, 2022, all eggs and egg products sold in this state shall be from hens that are housed in accordance with the UEP Animal Husbandry Guidelines and provided with no less than one square foot of usable floor space per egg-laying hen.

E. Beginning no later than January 1, 2025, all egg-laying hens in this state shall be housed in a cage-free manner.

F. Beginning no later than January 1, 2025, all eggs and egg products sold in this state shall be from hens housed in a cage-free manner.

G. Subsections (A) through (F) do not apply to egg producers or business owners or operators operating or controlling the operation of one or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs. Subsections (A) through (E) also do not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.

H. Beginning no later than October 1, 2022, in order to sell eggs or egg products within the state, a business owner or operator must have a certificate from the Supervisor certifying that the eggs or egg products are produced in compliance with subsections (C) through (F), or are exempt under subsection (G). The Supervisor will certify that eggs and egg products are produced in compliance with subsections (C) through (G) if the eggs or egg products are accompanied by documentation from a government or private third-party inspection and continuous process verification service that the Supervisor deems acceptable establishing that the eggs or egg products were produced in compliance with this Section. The immediate container of eggs and egg products shall be plainly and conspicuously marked with the words "ARS 710J" in bold-faced type not less than one-eighth inch in height; or in another manner pre-approved by the Department.

I. It shall be a defense to any action to enforce this Rule that a business owner or operator relied in good faith upon a written certification by the supplier that the eggs or egg products at issue were derived from an egg-laying hen which was housed in compliance with this Section.

J. All producers and producer dealers with operations within the state shall have a written biosecurity plan in place. At a minimum each producer and producer dealer shall:

1. Restrict access to all areas where poultry are housed or kept.
2. Take steps to ensure that contaminated material is not transported into any poultry barns.
3. Cover and secure feed in a manner that prevents wild bird, rodents or other animals from accessing the feed.
4. Cover and properly contain poultry carcasses, used litter, or other disease-containing organic materials that prevents wild birds, rodents or other animals from accessing the material and movement of the materials by the wind.
5. Keep houses in good repair and all areas to which the birds have access should be kept free of materials hazardous to the birds.

K. The biosecurity plan shall contain the following:

1. Methods for the disposal and handling of poultry manure.
2. Procedures for prevention, control and eradication of vectors for poultry diseases.
3. Procedures for the detection, control and treatment of poultry diseases.
4. Methods for the disposal and handling of culled birds and entire flocks under normal cyclic operations and following emergency depletion as a result of disease.
5. A facility poultry disease control and prevention plan which includes standard operating procedures with respect to specific measures to control and prevent disease including but not limited to structural and operational disease control and prevention provisions.
6. Procedures to prevent cross contamination between nest run and in line eggs.
7. Procedures to prevent the introduction and transmittal of diseases by vehicles and any other forms of transportation.
8. Signed agreements with all employees containing biosecurity procedures regarding contact with outside poultry and wild birds.

L. A producer and producer dealer shall allow the Department to enter the premises during normal working hours to inspect the biosecurity plan documents and the biosecurity that is implemented.

Historical Note
Former Rule 7; Former Section R3-6-07 renumbered as Section R3-2-907 (Supp. 82-1). Section R3-6-107 renumbered to R3-2-907 (Supp. 91-4). Section R3-2-907 renumbered to R3-2-904 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final rulemaking at 28 A.A.R. 802 (April 22, 2022), effective October 1, 2022 (Supp. 22-2).

R3-2-908. Sanitary Standards; Egg Processing

A. All egg producers and retail locations where lot consolidation is conducted in this state shall meet the facility and sanitary operation requirements prescribed by the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR 56, effective March 30, 2008. This material is incorporated by reference, does not include any later editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007.

B. No person other than a producer or producer dealer shall repack eggs. All eggs sold to the ultimate consumer must be pre-packaged with all required labeling requirements of this Article and A.R.S. Title 3 Chapter 5. A producer, producer dealer shall not pack or repack eggs that have been in retail distribution channels.

C. A retailer may lot consolidate eggs labeled for the ultimate consumer by a packer. A daily log with lot information is required and shall include volume consolidated, grade, size, brand, lot and source.

Historical Note

Former Rule 8; Amended effective October 1, 1979 (Supp. 79-5). Former Section R3-6-08 renumbered as Section R3-2-908 (Supp. 82-1). Amended effective January 1, 1985 (Supp. 84-6). Amended effective December 30, 1987 (Supp. 87-4). Amended effective March 23, 1990 (Supp. 90-1). Section R3-6-108 renumbered to R3-2-908 (Supp. 91-4). Section R3-2-908 renumbered to R3-2-905 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-909. Repealed

Historical Note

Former Rule 9; Former Section R3-6-09 renumbered as Section R3-2-909 (Supp. 82-1). Section R3-6-109 renumbered to R3-2-909 (Supp. 91-4). Section repealed effective July 13, 1995 (Supp. 95-3).

ARTICLE 10. AQUACULTURE

R3-2-1001. Definitions

In addition to the definitions provided in A.R.S. § 3-2901, the following shall apply unless the context otherwise requires:

1. "Certificate of Aquatic Health" is an official document from an issuing state or an equivalent form published by the United States Fish and Wildlife Service or the United States Department of Agriculture attesting that the live aquatic animals described thereon have been inspected and are free of the diseases and causative agents set forth in R3-2-1009.
2. "Department" means the Arizona Department of Agriculture.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1002. Fees for Licenses; Inspection Authorization and Fees

A. License fees are established as follows:

1. Aquaculture facility: $100 annually.
2. Fee fishing facility: $100 annually.
3. Aquaculture processor: $100 annually.
4. Aquaculture transporter: $100 annually.
5. Special licenses: $10 annually.

B. An expired license may be renewed within 90 days after expiration by payment of a $50 late fee.

C. Upon request of the licensee, the Department shall assess the licensed facility and, if applicable, certify the facility is free from infectious diseases and causative agents listed in R3-2-1009 before issuing a Certificate of Aquatic Health. All expenses properly incurred in the certification procedure of the inspection, including time, travel, and laboratory expenses, shall be paid to the Department by the licensee requesting certification.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

R3-2-1003. General Licensing Provisions

A. An applicant for a license to operate an aquaculture facility or a fee fishing facility, or to operate as an aquaculture processor or aquaculture transporter shall provide the following information on a form furnished by the Department:

1. Whether the applicant is an individual, corporation, partnership, cooperative, association, or other type of organization;
2. The name and address of the applicant;
3. A corporation shall specify the date and state of incorporation;
4. The principal name of the business, and all other business names that may be used;
5. The name, mailing address, and telephone number of the applicant's authorized agent;
6. The street address or legal description of the location of the facility to be licensed; and
7. The signature of the person designated in subsection (A)(5), and the date the application is completed for submission to the Department.

B. The Department shall grant a license when all conditions are met and assign a Department establishment number to each facility.

C. All licenses expire on December 31 for the year issued.

D. A licensee shall advise the Department in writing of any change in the information provided on the application during the license year. This information shall be provided within 30 calendar days of the change.

E. To prevent the spread of diseases and causative agents listed in R3-2-1009, the Department may inspect and take samples from any facility or shipment being transported. A licensee shall notify the Department within 72 hours of becoming aware of the presence of any disease or causative agent listed in R3-2-1009. Aquatic animals found to be infected with a disease or causative agent listed in R3-2-1009 are prohibited from interstate or intrastate movement without prior written Department approval.

F. The Department shall quarantine or seize aquatic animals, alive or dead, plants, or products for examination or diagnostic study when there is a potential for spread of a disease or causative agent listed in R3-2-1009, or any other disease or causative agent that could constitute a threat to aquatic animals or plants of the state. The Department shall issue a written notice to the licensee specifying:

1. The reason for the Department's action; and
2. The licensee's right to request a hearing as prescribed in A.R.S. § 3-2906.

G. A licensee shall conspicuously mark all quarantined aquatic products and quarantined areas in a manner specified by the Department.

H. A licensee shall pay all diagnostic, quarantine, and destruction costs.

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

R3-2-1004. Specific Licensing Provisions; Aquaculture Facility; Fee Fishing Facility; Special License Facility

A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate an aquaculture facility, a fee fishing facility, or a special license facility under A.R.S. § 3-2908(A) shall provide the following information on a form provided by the Department:
1. Water sources, transmission, and conveyances;
2. Method used to dispose of tailing waters and solid wastes;
3. Number and size of ponds, raceways, and tanks, if applicable;
4. Whether hatchery facilities are included;
5. A list of all animals and plants to be authorized under the license by genus, species, and common name.

B. An application to culture or possess an aquatic animal or plant that has not previously occurred in the drainage where the facility is located shall be accompanied by a written proposal. The applicant's proposal shall include:
1. Anticipated benefits from introducing the species;
2. Anticipated adverse effects from introducing the species, as it may affect indigenous or game fish, including hybridization;
3. Anticipated diseases inherent to introducing the species;
4. Suggestions for post-introduction evaluation of status and impacts of the introduced species; and
5. Structural and operational methods implemented to prevent escape of the species, if applicable.

C. Each body of water serving a facility shall be contained within the boundaries of the land owned or leased by the licensee.

D. A facility using public waters having natural or artificial inlets, rivers, creeks, washes, or canals shall provide mechanical screening approved by the Department to prevent live aquatic animals and plants, including eggs and fry, from escaping beyond the aquaculture facility boundaries or into public bodies of water.

E. An applicant for a special license under A.R.S. § 3-2908(A) shall also provide the following information to the Department at the time of application:
1. A written narrative describing the project in detail, the project purpose, the hypothesis, and the project duration; and
2. The proposed disposition of the aquatic animals or plants upon completion of the project.

F. The Department shall consider the recommendations of the Arizona Game and Fish Department, under A.R.S. § 3-2903, when determining whether to issue a license or an import permit under R3-2-1010. The Department may issue a license excluding some of the aquatic animal or plant species listed in the application.

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1005. Fee Fishing Facility

A licensee shall not allow an aquatic animal to be removed from a fee fishing facility unless:
1. The aquatic animal is dead, and
2. The licensee provides the person removing the aquatic animal with written proof of sale identifying the:
   a. Facility, by name, address, and Department establishment number issued under R3-2-1003(B);
   b. Date of harvest; and
   c. Number and species of aquatic animals transported from the facility.

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1006. Processor License

A. In addition to complying with the application requirements of R3-2-1003, applicants for a license to operate as an aquaculture processor as defined in A.R.S. § 3-2901(12) shall provide the following information on a form furnished by the Department:
1. Water sources, transmission, conveyances, and annual consumption in gallons or acre feet;
2. Method used to dispose of tailing waters and solid wastes;

B. A processing facility shall operate in a clean and sanitary condition during all periods of operation. The following are the minimum requirements for such establishments.
1. Each establishment shall have sanitary floors and walls impervious to water.
2. All outside windows and doors shall be screened.
3. There shall be a supply of potable water.
4. There shall be a sewage disposal system of such a type as not to be a breeding place for insects and not to constitute a hazard or to endanger public health.

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1007. Transporter License; Transport; Delivery

A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate as an aquaculture transporter of live aquatic animals as defined in A.R.S. § 3-2901(15) shall, on a form provided by the Department:
1. Designate whether the license is for interstate or intrastate transport, or both;
2. List aquatic transporting equipment to be used, including tanks and vehicles, and vehicle license number; and
3. State prior year volume or anticipated annual tonnage of live aquatic animals transported.

B. A transporter shall ensure that the aquatic transporting equipment has adequate water and oxygen at a temperature and in a quantity normal for the health of the live aquatic animals and shall be clearly marked, "Live Fish."

C. In addition to a copy of the Certificate of Aquatic Health, a transporter shall transport each container of live aquatic animals within the state with a document identifying:
1. Consignor's name, address, and telephone number;
2. Consignee's name, address, and telephone number;
3. Quantity and size of the aquatic animal being transported;
4. Genus, species, and common name of the aquatic animal being transported;
5. Date of shipment; and

6. Department establishment number.

D. A transporter shall deliver live aquatic animals only to a retail outlet, as prescribed at A.R.S. § 3-2907(J) or to a person listed in R3-2-1010(B).

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1008. Repealed

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1009. Disease Certification

A. A licensee requesting and receiving a Certificate of Aquatic Health shall have their facility inspected and all live aquatic animals, fertilized eggs and milt shall be found free of, but not limited to, the following diseases and causative agents:
1. Causative agent: Egtved Virus. Disease: VHS, Viral Hemorrhagic Septicemia of Salmonids.
2. Causative agent: Infectious Hematopoietic Necrosis Virus. Disease: IHN, Infectious Hematopoietic Necrosis of Salmonids.
3. Causative agent: Infectious Pancreatic Necrosis Virus. Disease: IPN, Infectious Pancreatic Necrosis of Salmonids.
4. Causative agent: *Ceratomyxa shasta*. Disease: Ceratomyxosis of Salmonids.
5. Causative agent: *Rhabdovirus carpio*. Disease: Spring Viremia of carp. Certification is required in this case only when the original origin of the shipment is from outside the United States.
6. Causative agent: *Renibacterium salmoniarum*. Disease: BKD, Bacterial Kidney Disease of Salmonids.
7. Causative agent: *Aeromonas salmonicida*. Disease: Furunculosis.
8. Causative agent: *Myxobolus cerebralis*. Disease: Whirling Disease of Salmonids.

B. The Department may require inspection for any disease or causative agent not listed in subsection (A) when there is evidence that the disease or causative agent may constitute a threat to aquatic animals or plants, aquatic wildlife or the aquaculture industry. The Department shall send written notice to all licensees pursuant to this Chapter when implementing this subsection, naming the disease or causative agent of concern. Action to quarantine or seize aquatic animals or plants pursuant to this subsection shall not be subject to delay pending such written notice.

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1010. Importation of Aquatic Animals

A. The owner, or owner's agent, importing live aquatic animals into the state shall ensure the animals are accompanied by the following:
1. A Certificate of Aquatic Health as defined in R3-2-1001, based upon an inspection of the originating facility within the 12 months preceding the shipment;
2. A transporter license issued under R3-2-1007; and
3. An import permit number issued by the Department under this Section, legibly written or typed on the certificate of aquatic health.

B. The owner, or owner's agent, of live aquatic animals, except those imported by a retail outlet as prescribed in A.R.S. § 3-2907(J), shall ensure that the animals are consigned to or in the care of:
1. An Arizona resident;
2. An aquaculture facility, fee fishing facility, or special license holder licensed by the Department;
3. A holder of an aquatic wildlife stocking permit issued by the Arizona Game and Fish Department; or
4. A holder of any aquatic animal license issued by the Arizona Game and Fish Department.

C. The owner, or owner's agent, may obtain an import permit number from the Department, Office of the State Veterinarian, by providing the following information:
1. Consignor's name, address, and telephone number;
2. Consignee's name, address, and telephone number;
3. Consignee's Department establishment number issued by the Department or a copy of an aquatic wildlife stocking permit or the license issued by the Arizona Game and Fish Department;
4. Origin of the shipment;
5. Genus, species, and common name of aquatic animals to be imported; and
6. Quantity and size classification of aquatic animals to be imported.

D. An import permit number remains valid for 15 calendar days from the date of issuance by the Department.

E. The Department shall refuse entry to any shipment that does not comply with this rule.

F. The Department shall quarantine and require destruction of any shipment, after its arrival, that it determines is infected with or was previously exposed to any causative agent or disease listed in R3-2-1009.

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

ARTICLE 11. VOLUNTARY EGG GRADING PROGRAM

R3-2-1101. Definitions

For the purpose of this Article, unless the context otherwise requires, the terms in this Section shall have the following meaning:

"Acceptable" means suitable for the purpose intended.

"Administrator" means the supervisor as defined in A.R.S. § 3-701.

"Ambient temperature" means the air temperature maintained in an egg storage facility or transport vehicle.

"AMS" means Agricultural Marketing Service, United States Department of Agriculture.

"Applicant" means any person or entity who requests any grading service.

"Appeal grading" means a re-grading requested by a recipient who is dissatisfied with an initial grading decision.

"Associate Director" means the associate director of the animal service division.

"Auditing services" means the act of providing independent verification of written quality assurance and value added standards for production, processing and distribution of eggs. Auditing services are performed by graders authorized by the Administrator to perform such audits and the service provided

will be in accordance with the provisions of this Article for grading services, as appropriate.

"Cage mark" means any stain-type mark caused by an egg coming in contact with a material that imparts a rusty or blackish appearance to the shell.

"Case" means, when referring to containers, an egg case, as used in commercial practice in the United States, holding 30 dozens of eggs.

"Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same size, kind, species, or method of processing.

"Chick papers" means the papers in which chicks are delivered.

"Condition" means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability.

"Consumer grades" means U.S. Grade AA, A, and B.

"Controlling person" means a person at least 21 years of age legally accountable for operations and management of the egg production plant.

"Department" or "AZDA" means the Arizona Department of Agriculture.

"Director" means the Director of the Arizona Department of Agriculture.

"Egg grading service" means the personnel who are actively engaged in the administration, application, and direction of egg grading programs and services pursuant to this Article.

"Eggs" means eggs of domesticated chickens.

"Eggs of current production" means eggs that are no more than 21 days old.

"Grademark" means the official identification symbol used to identify eggs officially graded by AZDA in accordance with this Article.

"Grader" means any employee assigned by AZDA to investigate and certify in accordance with this Article, the class, quality, quantity, or condition of products.

"Grading or grading service" means the determination by a grader that a product meets the standards of this Article regarding the class, quality, quantity, or condition of the product for the purpose of issuing a grade or grading certificate. Such determination may be performed by examining all product units or representative samples drawn by the grader; may be performed as a temporary, resident or non-resident grading service; and includes regrading performed in response to an appeal of a previous grading decision.

"Grading certificate" means a statement, either written or printed, issued by a grader pursuant to this Article, relative to the class, quantity, quality, or condition of products.

"Holiday or legal holiday" means the legal public holidays specified by State of Arizona Accounting Manual (SAAM).

"Identify" means to apply a grademark to products or the containers thereof.

"Interested party" means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

"Office of grading" means the office of any resident grader at the plant.

"Official AZDA certificate" means any form of certification, either written or printed, used under this Article to certify with respect to the sampling, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

"Official AZDA memorandum" means any initial record of findings made by an authorized person in the process of grading or sampling pursuant to this Article, any processing or plant-operation report made by an authorized person in connection with grading or sampling under this Article, and any report made by an authorized person of services performed pursuant to this Article.

"Official AZDA mark" means the grademark and any other mark, or any variations in such marks approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded, or indicating the appropriate U.S. grade or condition of the product, or for the purpose of maintaining the identity of products graded under this Article, including but not limited to, those set forth in R3-2-1111.

"Official identification" means any AZDA standard designation of class, grade, quality, size, quantity, or condition specified in this Article or any symbol, stamp, label, logo, or seal indicating that the product has been officially AZDA graded and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Supervisor and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

"Official plant" means the facilities used for a shell egg operation that has been approved by AZDA for grading purposes.

"Origin grading" means a grading made on a lot of eggs at a plant where the eggs are graded and packed.

"Packaging" means the primary or immediate container in which eggs are packaged and which serves to protect, preserve, and maintain the condition of the eggs.

"Packing" means the secondary container in which the primary or immediate container is placed to protect, preserve, and maintain the condition of the eggs during transit or storage.

"Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

"Plant" means the facilities used for a shell egg operation.

"Potable water" means water that has been approved by the State health authority or agency or laboratory acceptable to the Administrator as safe for drinking and suitable for food processing.

"Product or products" means eggs of the domesticated chicken.

"Quality" means the inherent properties of any product which determine its relative degree of excellence.

"Quality assurance inspector" means any designated company employee other than the plant owner, manager, foreman, or

supervisor, authorized by the State supervisor to examine product and to supervise the labeling, dating, and lotting of officially graded eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

"Recipient" means the individual or entity whose application for grading services has been approved by the Department.

"Resident grading service" means continuous supervision, in an official plant, of the handling or packaging of any product.

"Sampling" means the act of taking samples of any product for grading or certification.

"SE" means *Salmonella* Enteritidis.

"Shell protected" means eggs which have had a protective covering such as oil applied to the shell surface. The product used shall be acceptable to the Food and Drug Administration.

"Shipped for retail sale" means eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

"State supervisor" means the immediate supervisor of a Grader.

"Washed ungraded eggs" means eggs which have been washed and that are either sized or unsized, but not segregated for quality.

Historical Note

Section R3-2-1101 recodified from R3-2-101 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). New Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1102. General Provisions

A. Administration. The Administrator shall perform such duties as the Associate Director may require in the enforcement or administration of the provisions of this Article. The Administrator is authorized to waive for limited periods any particular provisions of this Article to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of this Article. The AZDA and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this Article.

B. Basis of grading service.

1. Grading service with respect to the determination of the quality of products shall be on the basis of the United States Standards, Grades, and Weight Classes for shell eggs. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the recipient; and such service, when approved by the Administrator, shall be rendered on the basis of such specifications. The supervision of packaging shall be in accordance with such instructions as may be approved or issued by the Administrator.
2. Whenever grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of cases as indicated in:
   a. R3-2-903 for stationary lots; or
   b. QAD 700 Shell Egg Graders Handbook Section 8 on-line sampling of Shell Eggs (8-30-2016).
3. Accessibility of product. Each product for which grading service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product.

C. Prerequisites to grading. Grading of products shall be rendered pursuant to this Article and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

D. Supervision. All plant grading service shall be subject to supervision at all times by an AZDA grader. Such service shall be rendered in accordance with instructions issued by the Administrator where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders are available.

E. Other applicable regulations. Compliance with this Article shall not excuse failure to comply with any other applicable Federal, State, or local laws or regulations.

Historical Note

Section R3-2-1102 recodified from R3-2-102 (Supp. 97-1). Amended effective October 8, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1103. Equipment and Facilities for Graders

Equipment and facilities to be furnished by the recipient for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

A. An accurate metal stem thermometer.

B. An accurate means to determine pH level of wash water.

C. Test kits for checking the concentration level of the solution used for sanitizing eggs and monitoring the concentration level of potable water treatment compounds in plants having chlorinators. The kit must be designed for testing the compound being used.

D. Protective equipment including, general purpose gloves and safety glasses to all egg graders who are monitoring the strength of potable water treatment compounds and egg sanitizing solutions, unless plant employees are trained to perform the testing under the direct supervision of the grader.

E. Electronic digital-display scales graduated in increments of 1/10-ounce or less for weighing individual eggs and test weights for calibrating such scales. Plants packing product based on metric weight must provide scales graduated in increments of one gram or less.

F. Electronic digital-display scales graduated in increments of 1/4-ounce or less for weighing the lightest and heaviest consumer packages packed in the plant and test weights for calibrating such scales.

G. Scales graduated in increments of 1/4-pound or less for weighing shipping containers and test weights for calibrating such scales.

H. Test weights sufficient in size to verify the accuracy of the lightest and heaviest unit of measurement weighed on any given scale located in the plant.

I. Two candling lights that provide a sufficient combined illumination through both the aperture and downward through the bottom to facilitate accurate interior and exterior quality determinations.

J. A candling booth adequately darkened and located in close proximity to the work area that is reasonably free of excessive noise. The booth must be sufficient in size to accommodate two graders, two candling lights, and other necessary grading equipment.

K. If deemed necessary by the supervisor, a cart or method of conveyance for the transportation of samples to and from the candling booth.

L. Furnished office space, suitable wireless internet connection, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the Administrator.

Historical Note

Section R3-2-1103 recodified from R3-2-103 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1104. Schedule of Operation of Official Plants

Grading operating schedules for services performed pursuant to this Article shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous eight-hour period per day (excluding not to exceed one hour for lunch), five consecutive days per week, within the administrative workweek, Saturday through Friday, for each shift required. Less than eight-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management one day in advance of any change in the hours grading service is requested.

Historical Note

Section R3-2-1104 recodified from R3-2-104 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1105. Application for Grading Service

A. An application for AZDA grading service may be made by egg producer or a producer dealer with operations located in Arizona.

B. Form of application. Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled. The applicant shall designate the employees of the applicant who will authorized to provide information to the AZDA grader or graders as may be necessary for the performance of the grading service.

C. Application for grading service in official plants; approval. Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to this Article. An application for grading service shall be approved when the application has been filed for grading service; a successful plant survey is completed; and all required facility or equipment modifications are completed.

D. Denial of service. An application for grading service may be denied by the Administrator when:

1. The applicant fails to meet the requirements of this Article prescribing the conditions under which the service is made available.
2. The product is owned by or located on the premises of a person currently denied the benefits of this Article.
3. Any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of this Article to any person or entity.
4. The Administrator determines that the application is an attempt on the part of a person currently denied the benefits of this Article to obtain grading services.
5. The applicant, after an initial survey has been made in accordance with this Article, fails to bring the grading facilities and equipment into compliance with this Article within a reasonable period of time.
6. Notwithstanding any prior approval whenever, before initiation of service, the applicant fails to fulfill commitments concerning the initiation of the service.
7. It appears that performing the services specified in this Article would not be in the best interests of the public welfare or of the Government.
8. It appears to the Administrator, in his sole discretion, that prior commitments of the Department or lack of resources necessitate denial of service.

E. Debarment. An applicant may be permanently debarred for the following reasons:

1. The giving or offering, directly or indirectly, of a bribe, or any money, loan, gift, or anything of value to an employee of the Department to obtain any benefit or special treatment;
2. Taking any action that falsely brings the Department in disrepute or that creates the appearance of impropriety;
3. Knowingly making a false or misleading statement of a material fact to the Department;
4. Using any official identification, grademark, stamp, symbol, label, seal, or identification without authority from the Department;
5. Forging, counterfeiting, or falsely simulating any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to this Article;
6. Use of an official grademark, certificate, symbol, stamp, label, seal, or identification without authority;
7. Failure to make an official plant or product accessible for grading service;
8. Interference with the performance of duty of an AZDA grader, licensee, contractor, or employee.
9. Failure to pay a Department invoice within 30 days after issuance of the invoice; or
10. Any other violation of any provision of the statutes, rules and regulations of the Department that threatens the health, safety, or welfare of the public.

F. Notification. An applicant shall be promptly notified of the reasons for a denial of service. A written petition for reconsideration of such denial may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the application. Within 20 days following the

receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant of the reasons for the denial thereof. Service of notice may be accomplished by regular mail and/or email.

G. Withdrawal of application. An application for grading service may be withdrawn by the applicant at any time before the service is performed, provided that the applicant pays all expenses incurred by the AZDA in connection with such application.

Historical Note

Section R3-2-1105 recodified from R3-2-105 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1106. Authority of Applicant

A. Proof that an authorized controlling person is applying for any grading service may be required at the discretion of the Administrator. Such proof may include, but is not limited to:

1. Documentation, as specified under A.R.S. § 41-1080(A), of the applicant's lawful presence in the U.S.
2. Proof of business entity structure of the plant.
3. Proof of ownership interest or position held in the plant.
4. Documentation of designated authority from the business entity under which the plant operates.

B. The approved recipient of grading services must notify the Department of a change of control or ownership of the official plant within 15 days after such change is effective.

Historical Note

Section R3-2-1106 recodified from R3-2-106 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1107. Order of Service

AZDA grading service shall be performed, insofar as practicable and subject to the availability of qualified graders, on a first-come, first-served basis, except that precedence may be given to an application for an appeal grading.

Historical Note

Section R3-2-1107 recodified from R3-2-107 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1108. Types of Grading Service

A. Scheduled continuous grading service on a resident basis and continuous grading service on a nonresident basis. Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty, but is of a reoccurring nature. Both of these services are performed when an applicant requests that an AZDA/inspector grader be stationed in the applicant's processing plant and grade eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty. Eggs graded under AZDA resident grading service are only eligible to be identified with the official grademarks shown in R3-2-1111 when processed and graded under the supervision of a grader/inspector, or quality assurance inspector as provided in R3-2-1114.

B. Unscheduled temporary grading service. Temporary grading service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Eggs graded under temporary grading service are only eligible to be identified with the official AZDA grademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in R3-2-1114.

C. Auditing service. Auditing service is performed when an applicant requests independent verification of written quality assurance and value added standards for production, processing, and distribution of eggs. Charges or fees are based on time, travel, and expenses needed to perform the work.

D. The Department shall determine the number of graders needed to perform grading services. Recipients shall not ask AZDA graders to assume plant managerial responsibilities.

Historical Note

Section R3-2-1108 recodified from R3-2-108 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1109. Suspension of Grading Service or Plant Approval for Correctable Cause

A. Provision of grading services is a privilege and not a right. Any plant approval of grading services given pursuant to this Article may be suspended by the Administrator for:

1. Failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness.
2. The use of operating procedures which are not in accordance with this Article;
3. Alterations of grading facilities or equipment which have not been approved in accordance with this Article; or
4. Any reasons listed under R3-2-1105(D) "Denial of Service," or required by any other need to protect public health, safety, or welfare.

B. Suspension may occur prior to the right to have a hearing in cases in which immediate suspension is required to protect public health, safety, or welfare. Whenever it is feasible to do so, written notice in advance of such suspension of plant approval shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the action shall be promptly confirmed in writing after the suspension and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. During such period of suspension, grading service shall not be rendered. After appropriate corrective action is taken, grading service will be restored immediately, or as soon thereafter as a grader can be made available.

C. If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall send formal notice of the suspension pursuant to A.R.S. Title 41, Chapter 6, Article 10. Any suspension shall continue in effect

pending the outcome of a hearing unless otherwise ordered by the Administrator.

D. Upon suspension of grading service, all grademarks (labels, seals, tags, or packaging material bearing other official identification), shall, under the supervision of a person designated by the AZDA, be destroyed, obliterated, or sequestered in a manner acceptable to the AZDA.

E. In any case where grading service is suspended under this Section, the person concerned may thereafter apply for grading service once the conditions giving rise to the suspension or withdrawal have been remediated.

Historical Note

Section R3-2-1109 recodified from R3-2-109 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1110. Authority to Use Official Insignia

A. Authority to use official AZDA grademarks. Authority to use an AZDA grademark on products is granted only to recipients who utilize the services of a grader or quality assurance inspector in accordance with this Article. Packaging materials bearing official identification marks shall be approved pursuant to R3-2-1110 to R3-2-1111, inclusive, and shall be used only for the purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official AZDA identification may result in cancellation of grading service, denial of the permission to use of labels or packaging materials bearing official identification, or denial of other benefits of the Act pursuant to the provisions of R3-2-1105 D.

B. Approval of official identification. No label, container, or packaging material which bears official identification may contain any statement that is false or misleading. No label, container, or packaging material bearing official identification may be printed or prepared for use until the printers' or other final proof has been approved by the Administrator in accordance with this Article. It is the recipient's responsibility to ensure label compliance with the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and the regulations promulgated under this Article. The use of finished labels must be approved as prescribed by the Administrator. A grader may apply official identification stamps to shipping containers if they do not bear any statement that is false or misleading. If the label is printed or otherwise applied directly to the container, the principal display panels of such container shall for this purpose be considered as the label. The label shall contain the name, address, and ZIP Code of the packer or distributor of the product, the name of the product, a statement of the net contents of the container, and the AZDA grademark.

C. Nutritional labeling. Nutrition information must be included on the labeling of each unit container of consumer packaged eggs in accordance with the General Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, located at 21 CFR §§ 101.1 to 101.108. The nutrition information included on labels is subject to review by the Food and Drug Administration prior to approval by the Department.

D. Refrigeration labeling. All containers bearing official AZDA "Grade AA" or "Grade A" identification shall be labeled to indicate that refrigeration is required, for example, "Keep refrigerated," or words of similar meaning.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1111. Form of AZDA Grademark and Information Required

A. Form of official identification symbol and grademark. The logo set forth in Illustration 1 shall be the official identification symbol for purposes of this Article and when used, imitated, or simulated in any manner in connection with eggs, shall be *prima facia* evidence that the product has been officially graded in compliance with this Article.

B. Eggs with consumer grades. Except as otherwise authorized, the AZDA grademark used to officially identify AZDA consumer-graded eggs shall be of the form and design indicated in Illustrations 2 through 4. The logo shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures. No variation may be used for the color scheme of Illustration 4.

C. The **"**Produced From**"** AZDA grademark. The Illustration 5 grademark may be used to identify products for which there are no official U.S. grade standards (for example, pasteurized shell eggs, and/or hard boiled eggs), provided that these products are approved by the Department and are prepared from AZDA compliant Consumer Grade AA or A eggs. The Illustration 5 grademark may utilize any one of the designs shown in Illustrations 2 through 4. The "Produced From" text outside the symbol shall be conspicuous, legible, and in approximately the same proportion and close proximity to the symbol as shown in Illustration 5.

D. Information required on AZDA grademark. Except as otherwise authorized by the Administrator, each AZDA grademark shall include the letters "AZDA" and the U.S. grade of the product it identifies, such as "Grade AA," as shown in Illustration 2. Such information shall be printed with the symbol and the wording within the symbol in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

E. Product class. The size or weight class of the product, such as **"**Large,**"** may appear within the grademark as shown in Illustration 3. If the size or weight class is omitted from the grademark, it must appear prominently on the main panel of the carton.

F. Plant number. The plant number of the official plant preceded by the letter **"P"** must be shown on each carton or packaging material.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020

(Supp. 20-2).

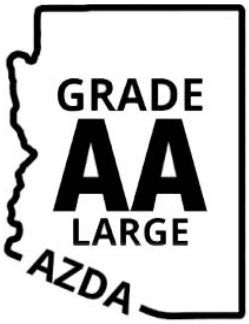
Illustration 1. AZDA

Historical Note
Illustration 1 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 2. AZDA Grade AA

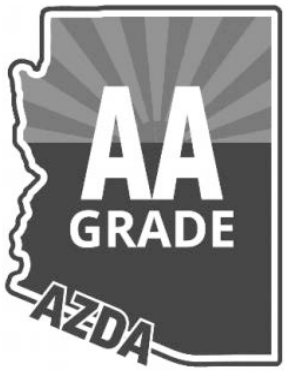
Historical Note
Illustration 2 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 3. AZDA Grade AA Large



Historical Note
Illustration 3 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 4. AZDA AA Grade



Historical Note
Illustration 4 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 5. AZDA Grade AA Produced From Shell Eggs

Historical Note
Illustration 5 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-4-1112. Lot Marking of Officially Identified Eggs
Each carton identified with the AZDA grademarks shown in R3-2-1111 shall be legibly lot-numbered on the consumer package and the carton, and may also be shown on the individual egg. The lot number shall be the consecutive day of the year (Julian date) on which the eggs were packed (for example, 132), except other lot-numbering systems may be used when submitted in writing and approved by the Administrator.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1113. Retention Directives
A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of eggs which are not in compliance with this Article or are held for further examination, and for any equipment, utensils, rooms or

compartments which are found unclean or otherwise in violation of this Article. Any such item shall not be released until in compliance with this Article and retention identification shall not be removed by anyone other than a grader.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1114. Prerequisites to Packaging Eggs Identified with Grademarks
Quality assurance inspector required. The official grademark identification of any product as provided in this Article shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official grademark identification.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1115. Grading Requirements of Eggs Identified with AZDA Grademarks
A. Eggs to be identified with the AZDA grademarks illustrated in R3-2-1111 must be individually graded by a grader.
B. In order to be officially identified with an AZDA consumer grademark, eggs shall:
1. Be of current production;
2. Be produced and processed within the borders of Arizona;
3. Not possess any undesirable odors or flavors;
4. Not have previously been shipped for retail sale;
5. Meet consumer Grade A or Grade AA, as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007, and can be found online at https://www.ams.usda.gov/sites/default/files/media/Shell_Egg_-Standard%5B1%5D.pdf;
6. Be produced and packaged in a facility in accordance with the Food and Drug Administration, Department of Health and Human Services' requirements for the Production, Storage, and transportation of Shell Eggs as specified in 21 CFR §§ 118.1 to 118.12, revised as of April 1, 2011, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007;
7. Be produced and packaged in a facility that meets the Regulations Governing the Inspection of Eggs under the Egg Products Inspection Act (EPIA), as specified in 7 CFR §§ 57.1 to 57.970, revised as of April 12, 2006, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007;
8. Be produced in a facility that has implemented a SE environmental monitoring program which includes testing for SE in chick papers and in the house environment when the pullets are 14-16 weeks of age, 40-45 weeks of age, four to six weeks post-molt, and pre-depopulation.
9. Be produced in a facility that has implemented and maintained a vaccination program to protect against SE infection, which includes a minimum of two attenuated live vaccinations and one killed or inactivated vaccination, or an alternative vaccination program that has been approved by the Department after having been demonstrated in the Department's estimation to be equally effective.

C. Management at an official plant is responsible for notifying the AZDA grader whenever contaminated or adulterated eggs are present in the official plant. Any eggs identified as contaminated or adulterated must be properly labeled and controlled by plant management. This includes eggs originating from a layer house with an SE-positive environment or eggs testing positive for the presence of SE. Failure to control, detain and/or notify the grader of the presence of contaminated or adulterated eggs in the official plant will constitute a violation of this Article. Department employees are authorized to inspect lay houses and review plant documents to determine compliance with this Article.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1116. Payment of Fees and Charges
A. Fees and charges for any grading service shall be paid by the recipient by check, draft, or money order payable to the "Arizona Department of Agriculture Egg Program." AZDA may require that fees and charges shall be paid in advance, and shall include travel, per diem, or other expenses incurred by the Department in connection with providing grading services.
B. The cost of an appeal grading or review of a grader's decision shall be borne by the appellant on a unscheduled temporary basis at rates set forth in R3-2-1117, plus travel, per diem, or other expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged for the regrading.
C. Invoices for services previously rendered will be issued no later than the 10th day following the end of the period in which the service was rendered and are payable in full upon receipt.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1117. Charges for Grading Service
A. Scheduled continuous grading service. The following rates apply to continuous grading service on a resident basis and continuous grading service on a nonresident basis per grader:
1. Regular rate: $38.00/hour
2. Overtime rate: $57.00/hour
3. Holiday rate: $58.00/hour

B. Plant survey, unscheduled temporary, auditing and appeal grading services. The following rates apply to temporary and auditing service per grader:
1. Regular rate: $57.00/hour
2. Overtime rate: $85.00/hour
3. Holiday rate: $87.00/hour

C. Reapplication after termination of service by recipient. If a recipient causes termination under R3-2-1105(D), and reapplies within 12 months from the date of termination, there will

be an additional re-application fee of $300 in addition to the above fees.

D. Extra charges. The following extra charges shall be assessed:

1. All hours worked by an assigned grader or another grader in excess of the approved tour of duty, worked on a non-scheduled workday, or worked on a State holiday outside of the approved tour of duty, will be considered as overtime, at the rate of time and one-half.
2. For all hours of work performed in a plant without an approved tour of duty, the charge will be the temporary grading service.

E. No charges. No charges will be assessed:

1. Solely because of a change in name or ownership of the official plant, unless the recipient of services fails to notify the Department within the time limit specified in R3-2-1105, in which case the above charges will apply.
2. When the assigned grader is temporarily reassigned by AZDA to perform grading service for another service recipient.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1118. Termination by Recipient

Grading services under this Article shall be unilaterally terminated by the recipient of such service when:

A. Service is not installed within six months from the date the application is filed due to inaction by the applicant or recipient on Department requirements.

B. Service remains inactive for a period of more than six months due to a recipient's request for removal of a grader and the recipient does not accept reassignment of another grader by the Department.

C. The recipient is terminated for cause based on violations listed in R3-2-1105(D).

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1119. Mutual Termination

A. The Department and the recipient of service may mutually agree to termination of the service, under the following terms:

B. Previously paid fees will not be returned to the service recipient.

C. Pending charges will be paid in full for completed work of the Department.

D. A pending application will be considered terminated, but a new application may be filed at any time, without penalty.

E. Termination shall not take effect until the end of a 30-days' notice period, unless the parties agree otherwise.

F. The mutual decision to terminate and any related agreements are documented in writing.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1120. Appeals

A. Appeal grading. An appeal grading may be requested by any recipient or authorized designee or other interested party ("appellant") who is dissatisfied with the determination by a grader of the class, quality, quantity, or condition of any product as evidenced by the AZDA grademark and accompanying label, or as stated on a grading certificate.

1. The appeal shall be filed with the original grader's immediate supervisor.
2. Initial review of the appeal shall be made by the original grader's immediate supervisor, or by one or more licensed graders assigned by the immediate supervisor to review the appeal.
2. An appeal may be made orally or in writing. If made orally, written confirmation is required. The appellant shall clearly state the reasons for requesting the appeal grading and a description of the product, or the decision which is questioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be provided to the grader assigned to perform the appeal grading.
3. The appellant's request for the appeal grading may be refused when it appears to the reviewer that the reasons given in the request are frivolous or not substantial, the quality or condition of the product has undergone a material change since the original grading, the original lot has changed in some manner, or the appellant has not materially complied with the requirements of this Article. In such case, the appellant shall be promptly notified of the reason or reasons for such refusal.
4. If an appeal grading is granted, it shall be performed by a grader other than the original grader. Whenever practical, an appeal grading shall be conducted jointly by two independent graders.
5. The following procedures shall be used for appeal grading:
   a. The appeal sample shall consist of product taken from the original sample container plus an equal number of samples selected at random.
   b. When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in R3-2-1102.
   c. Eggs shall not have been moved from the original place of grading and must have been maintained under adequate refrigeration.
6. Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was upheld, modified, or rejected. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Department. When the appeal grader assigns a different grade to the lot, the existing AZDA grademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.

B. Appeal for suspension, termination or denial of service or debarment. Any person whose grading service is suspended, terminated, denied service, or debarred, may request a hearing before an administrative law judge pursuant to A.R.S. Title 41, Chapter 6, Article 10. The decision of the administrative law judge is subject to review by the Director as provided by A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R.

916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1121. AZDA Grading Certificates

A. Forms. AZDA grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

B. Issuance.

1. Resident grading basis. Certificates will be issued only upon request therefor by the applicant or AZDA. When requested, a grader shall issue a certificate covering product graded by such grader. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.
2. Other than resident grading. Each grader shall, in person or by the grader's authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader, if such person has been designated as the authorized agent of such grader by the Administrator, provided that:
   a. The certificate is prepared from an official memorandum of grading signed by the grader; and
   b. A notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign both the agent's name and the grader's name, for example, "John Doe by Mary Roe."

C. Disposition. The original and required or requested copies of the grading certificate, immediately upon issuance, shall be delivered, mailed, or electronically submitted to the recipient or the recipient's designee. One copy is required to be sent and the recipient may request additional copies. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1122. Minimum Facility and Operating Requirements for Egg Grading and Packing Plants

A. For grading services that are provided on a resident or temporary basis, QAD 700 Shell Egg Graders Handbook Section 02 through Section 08, revised as of August 30, 2016. This material is incorporated by reference, does not include any later amendments or editions of the incorporate matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007; and the following minimum facility and operating conditions will be required:

B. Applicants must comply with all applicable Federal, State and local government occupational safety and health regulations.

C. Processing facilities are required to have a documented and implemented Quality Management System that meets Title 21, Part 117 of the U.S. Code of Federal Regulations "Current Good Manufacturing Practice, Hazard Analysis, and Risk-based Preventive Controls for Human Foods," revised as of April 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporate matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.

D. General requirements for premises, buildings and plant facilities.

1. The outside premises shall be free from refuse, rubbish, waste, unused equipment, and other materials and conditions which constitute a source of odors or a harbor for insects, rodents, and other vermin.
2. The outside premises adjacent to grading, packing, cooler, and storage rooms must be constructed to provide proper drainage to prevent conditions that may constitute a source of odors or propagate insects or rodents.
3. Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.
4. Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and conduct grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.
5. The floors, walls, ceilings, partitions, and other parts of the grading and packing rooms including benches and platforms shall be constructed of materials that are readily cleanable, maintained in a sanitary condition, and impervious to moisture in areas exposed to cleaning solutions or moist conditions. The floors shall be constructed as to provide proper drainage.
6. Adequate toilet accommodations that are conveniently located and separated from the grading and packing rooms are to be provided. Handwashing facilities shall be provided with hot and cold running water, an acceptable handwashing detergent, and a sanitary method for drying hands. Toilet rooms shall be ventilated to the outside of the building and be maintained in a clean and sanitary condition. Signs shall be posted in the toilet rooms instructing employees to wash their hands before returning to work. In new or remodeled construction, toilet rooms shall be located in areas that do not open directly into processing rooms.
7. A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.
8. Adequate packing and packaging storage areas are to be provided that protect packaging materials and are dry and maintained in a clean and sanitary condition.

E. Grading and packing room requirements.

1. The egg grading or candling area shall be capable of adequate darkening to make possible the accurate quality determination of the candled appearance of eggs. There shall be no light source or reflection of light that interferes with, or prohibits the accurate quality determination of eggs in the grading or candling areas.
2. The grading and candling equipment shall provide adequate light to facilitate quality determinations. When needed, other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.
3. The grading and candling equipment must be sanitarily designed and constructed to facilitate cleaning. Such equipment shall be kept reasonably clean during grading and packing operations and be thoroughly cleaned at the end of each operating day.

4. Egg weighing equipment shall be constructed of materials to permit cleaning; operated in a clean, sanitary manner; and shall be capable of ready adjustment.
5. Adequate ventilation, heating, and cooling shall be provided where needed.

F. Cooler room requirements.

1. Cooler rooms holding eggs that are identified with a consumer grade shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C).
2. Accurate thermometers shall be provided for monitoring cooler room temperatures.
3. Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

G. Egg protecting operations.

1. Egg protecting (oil application) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.
2. Component equipment within the egg protecting system, including holding tanks and containers, must be sanitarily designed and maintained in a clean and sanitary manner, and the application equipment must provide an adequate amount of oil for shell coverage of the volume of eggs processed.
3. Eggs with excess moisture on the shell shall not be shell protected.
4. Oil having any off odor, or that is obviously contaminated, shall not be used in egg protection operations. Oil is to be filtered prior to application.
5. The component equipment of the application system shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed.
6. Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.

H. Egg cleaning operations.

1. Egg washing equipment must be sanitarily designed, maintained in a clean and sanitary manner, and thoroughly cleaned at the end of each operating day.
2. Egg drying equipment must be sanitarily designed and maintained in a clean and sanitary manner. Air used for drying purposes must be filtered. These filters shall be cleaned or replaced as needed to maintain a sanitary process.
3. The temperature of the wash water shall be maintained at 90 ^{o}F (32.2 ^{o}C) or higher, and shall be at least 20 ^{o}F (6.7 ^{o}C) warmer than the internal temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle. Accurate thermometers shall be provided for monitoring wash water temperatures.
4. Approved cleaning compounds shall be used in the wash water.
5. Wash water shall be maintained at a measurable pH level of 11 or higher. Accurate testing equipment shall be provided and accessible to the grader. If continuous monitoring of pH is not possible, the applicant should devise a monitoring system for documenting pH with a frequency that has been validated.
6. Wash water shall be changed approximately every four hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.
7. Replacement water shall be added continuously to the wash water of washers. Chlorine or quaternary sanitizing rinse water may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse water may not be used as part of the replacement water.
8. Only potable water may be used to wash eggs. Each official plant shall submit certification to the office of grading stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds two parts per million, equipment shall be provided to reduce the iron content below the maximum allowed level. Frequency of testing for potability and iron content shall be determined by the Administrator. When the water source is changed, new tests are required.
9. Waste water from the egg washing operation shall be piped directly to drains.
10. The washing, rinsing, and drying operations shall be continuous and shall be completed as rapidly as possible to maximize conservation of the egg's quality and to prevent sweating of eggs. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.
11. Prewetting eggs prior to washing may be accomplished by spraying a continuous flow of water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this Section.
12. Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water. The spray-rinse water shall contain a sanitizer that has been determined acceptable for the intended use by the supervisor and of not less than 100 PPM nor more than 200 PPM of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the Administrator.
13. Test kits shall be provided and used to determine the strength of the sanitizing solution.
14. During non-processing periods, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat that may diminish the quality of the egg.
15. Washed eggs shall be reasonably dry before packaging and packing.
16. Steam, vapors, or odors originating from the washing and rinsing operation shall be continuously and directly exhausted to the outside of the building.

I. Requirements for eggs officially identified with a grademark.

1. Eggs that are officially identified with an AZDA grademark shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging.
2. Eggs that are to be officially identified with the AZDA grademark shall be packed only in new packaging materials that are clean, free of mold, mustiness and off odors, or clean and sanitized packaging material designed to be reused, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution. When packed in other than fiber packing material, the containers must be of sound construction and maintained in a reasonably clean manner.

J. Use of approved chemicals and compounds.

1. All egg washing and equipment cleaning compounds, defoamers, destainers, sanitizers, inks, oils, lubricants, or any other compound that comes into contact with the eggs shall be approved by the national supervisor for their specified use and handled in accordance with the manufacturer's instructions.
2. All pesticides, insecticides, and rodenticides shall be approved for their specified use and handled in accordance with the manufacturer's instructions.

K. Marking individual eggs. The marking of individual eggs may be requested by processors as part of a specification requirement or for other marketing purposes.

1. Stamping eggs. Recognizing the difficulty in clearly stamping the rounded surface of an egg, a lot average tolerance of 10-percent for individual eggs with partial, illegible, or no marks in any combination is permitted with no individual case exceeding 20-percent. These tolerances may be applied as a moving average when performing online sampling or as a lot average while performing stationary lot gradings. If more than 50% of the image or letter or letters is missing, the symbol is illegible. Stamped eggs are not classified as stains or dirty. They are to be graded without regard to marking. An official grade cannot be assigned to a mixed lot of eggs that contains individually marked and unmarked eggs. If requested, the lot may be graded for all factors except ink stains. Lot averages may be shown on the certificate. The section "Official Grade and Size" shall state "No AZDA Grade." The following statement shall also be placed in the "Remarks" section: "Lot contains marked and unmarked eggs. Eggs graded for all factors except ink stains." Individual eggs with ink blotches or smears from dating devices are to be classified as stains or dirty, depending on the intensity and/or area of the stain [guidance not clear]. Inks used in marking individual eggs which will be officially graded are to be approved by the Administrator prior to their use. The request for approval should be accompanied with a copy of the ink formula, the name of the product, and the name and address of the manufacturer.
2. Laser etching (marking eggs). The use of a laser etching system to mark information is subject to joint review by the Food and Drug Administration (food safety impact evaluation) and AZDA (quality impact evaluation). Only approved laser etching systems may be used to identify eggs to be officially graded and identified with an AZDA grademark. The amount of the shell surface available for laser etching and the information etched on the shell is subject to review by the resident grader and the supervisor. The information etched on the shell must not interfere with the graders ability to evaluate the quality attributes of the egg.
3. When an individual egg is marked, whether an applied ink or laser etched, the information must be consistent with the information on the label, for example, any marketing claims, production code, or packer identity. If this information is not consistent throughout the lot, the eggs are not eligible to be identified with an AZDA grademark.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1123. Health and Hygiene of Personnel

A. No person known to be affected by a communicable or infectious disease shall be permitted to come in contact with the product.

B. Plant personnel coming into contact with the product shall wear clean clothing.

Historical Note
Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1124. Use of the "Produced From" Labeling

A. Use of the wording "Produced From" in conjunction with the AZDA grademark, is limited to products derived from AZDA Grade AA or Grade A eggs for which there are no U.S. grade standards (for example, pasteurized eggs or hard-cooked eggs). The following guidelines are to be used when monitoring the official grade identification of these types of products.

1. Approval. Applicants interested in utilizing the "Produced From" labeling must submit a written proposal to the Administrator. The proposal is to include the type or types of product to be labeled and the applicant's plan for controlling the use and labeling of officially identified product. After review by the supervisor, the supervisor is to forward the request to the Administrator for final review and approval. Upon approval, the supervisor is to reconfirm all of the requirements with the applicant prior to any actual grade identification.
2. Verification visits. To assure that only officially graded eggs are being used, the processing, packing, and packaging must be closely monitored. Each verification visit shall include a review of records, product inventory, processing procedures, packing, packaging, storage, and shipping practices to confirm that the applicant is following the protocol outlined in their approved plan. In plants with resident service, the supervisor or Administrator is to be present during the initial production period to monitor the process and verify compliance. The grader will conduct all subsequent monitoring and verification activities with oversight from the supervisor. In temporary or fee locations, plant management must notify the supervisor each time the "produced from" labeling will be used or, alternatively, provide the supervisor with a projected production schedule. At these locations, compliance will be based on the applicant's established history of compliance as outlined in the following schedule:
   a. Level 1 - The supervisor or administrator is to monitor and verify the process on the initial day of production. The supervisor or a grader will conduct subsequent visits. At least one additional verification visit is to be conducted during the next 10 production days. If no discrepancies are noted, one visit is to be conducted for each 30 days of production until three consecutive satisfactory visits have been completed. Once this verification period has ended without any noted program non-conformance, monitoring may proceed to Level 2.
   b. Level 2 - Supervisor or a grader is to conduct quarterly verification visits provided the applicant continues to meet all program requirements. If any nonconformance is noted during these visits, monitoring reverts back to Level 1. Misuse of the labeling will result in cancellation of the approval.

B. Recordkeeping. Recipients shall maintain, and make available for review, all invoices or applicable Grading Certificates covering product received, produced, and shipped. At a minimum, these records must include the name and address of original packer, amount received, quantity produced, brand names, lot numbers, quantity shipped and name and address of receivers. Records must be maintained for two years.

C. Cost. There will be no additional charge to resident plants when graders monitor product labeling during their normal grading activities. When graded product is shipped from official plants to other processing locations for re-packaging that are not under continuous AZDA supervision, time and expenses associated in conducting the verification visits will be charged to the recipient at the current Temporary grading and auditing service rate.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1125. Specification Grading

A. Applicants may request for additional specifications to be certified that exceed the standards of this Chapter. The requested specifications must be submitted in writing to the administrator for approval. The approving official will review the information for approval or advise the applicant of the reason or reasons for disapproval. If the specification is approved, a letter enclosing a copy of the approved application and specification will be returned to the applicant with a request to provide copies of the specification to each supplier and applicable AZDA grader. Each page of the approved specification will have an approval stamp bearing the date of approval and the signature of the approving official. Additionally, each page will be sequentially numbered such as page 1 of 5, page 2 of 5, etc.

B. Plant management is responsible for advising graders when they are preparing to pack eggs in accordance with an approved specification. However, each grader must be familiar with the approved specification list and, to the extent practically possible, be aware when products with approved specifications are being packed at the duty location. When a plant packs product requiring compliance with an approved specification, the grader shall obtain a copy of the specification from plant management and assure that all provisions of the specification are met. As applicable, product that meets specification requirements will be identified in accordance with procedures outlined in the approved specification. When the specification requires the issuance of a grading certificate, the following statement is to be placed in the remarks section of the certificate: "Product covered by this certificate meets specification requirements for_____."

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

ARTICLE 12. ACQUISITION AND USE OF SODIUM PENTOBARBITAL AND DERIVATIVES BY UNLICENSED INDIVIDUALS IN ANIMAL SHELTERS

R3-2-1201. Definitions

1. "Agreement" shall refer to a contract signed by the responsible person and the State Veterinarian whereby the responsible person has met all requirements set forth in Section R3-2-1202. The agreement remains in effect until the expiration of the DEA registration or a change in employment status of the responsible person with the animal shelter.
2. "Approved curriculum" means any euthanasia-training curriculum approved by the AVMA or the State Veterinarian of Arizona.
3. "Authorized employee" means an unlicensed individual who is authorized to euthanize animals, takes direction from a responsible person or a licensed person, and has obtained State-Veterinarian-approved training in the use and handling of controlled substances as set forth in this Article.
4. "AVMA" means the American Veterinary Medical Association.
5. "AVMA Guidelines for the Euthanasia of Animals: 2020 Edition" means that specific edition of guidelines and does not include any later amendments or editions of the incorporated material, and is on file with the Department.
6. "Controlled Substances Act" refers to 21 U.S.C.A. § 801, et seq.
7. "Controlling person" means the natural person who exercises legal ownership, control, or designated leadership of a shelter.
8. "DEA" refers to the federal Drug Enforcement Agency.
9. "Licensed person" means a veterinarian licensed by the Arizona Veterinary Medical Examining Board, who is exempt from the euthanasia training requirements.
10. "Responsible person" means an unlicensed individual who meets the requirements of R3-2-1202, who is employed by the shelter, and who in the absence of a licensed person, has agreed to supervise the acquisition, storage, administration, and record- keeping of the controlled substances in accordance with the Controlled Substances Act and this Article.
11. "Shelter" means an animal care and control shelter operated by any town, city, county or the state, including privately operated animal shelters that are utilized by a town, city, county or the state.
12. "State Veterinarian" means the person appointed as the State Veterinarian under A.R.S. § 3-1211.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1327 (June 9, 2023), effective July 8, 2023 (Supp. 23-2).

R3-2-1202. General Provisions

A. Euthanasia of animals shall be done in compliance with the provisions of this Article and in accordance with procedures established under A.R.S. § 11-1021 by the local governing body.

B. Any shelter that does not employ a licensed supervisory veterinarian may apply for a DEA controlled-substances registration for each physical location in order to administer euthanasia. DEA will only grant the registration if the shelter is approved by, and meets the standards of, the State Veterinarian, as follows:

1. The responsible person is formally designated by the controlling person of the shelter as the individual responsible to obtain and manage controlled substances on behalf of the shelter;
2. The responsible person must successfully complete an approved euthanasia training course;
3. The responsible person and the State Veterinarian must execute an agreement obligating the responsible person to comply with this Article;

4. The responsible person is 21 years of age or older; and
5. The responsible person shall provide three professional references to the State Veterinarian to demonstrate professionalism and good moral character.

C. Duties and responsibilities of the responsible person are to:
1. Abide by all local, state, and federal laws and regulations pertaining to the operation of a shelter, including those laws and regulations governing possession and use of controlled substances.
2. Ensure that any authorized employee who administers euthanasia complies with the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals: 2020 Edition.
3. Ensure that any authorized employee who administers euthanasia has successfully completed a curriculum of euthanasia training approved by the State Veterinarian.

D. Prior to the expiration of the current DEA registration, the responsible person shall submit an application to the State Veterinarian at least 45 days prior to that expiration, requesting re-approval of the shelter according to the requirements of this Article. The State Veterinarian approval shall run concurrently with the DEA registration, except as indicated in subsection (E).

E. The shelter shall inform the State Veterinarian within 14 days of a change in:
1. Ownership or controlling person;
2. Location;
3. Responsible person; or
4. Expiration or termination of an agreement or contract between a town, city, county or state utilizing the services of a privately operated shelter or shelters.

F. Upon a change listed in subsection (E), the controlling person shall file an application with the State Veterinarian, requesting re-approval of the shelter according to the requirements of this Article. The existing agreement terminates upon the date of the change, and the shelter shall not administer any controlled substances until the State Veterinarian approves the new application and a new DEA registration is obtained.

Historical Note
New Section made by final rulemaking at 29 A.A.R. 1327 (June 9, 2023), effective July 8, 2023 (Supp. 23-2).

R3-2-1203. Requirements of Euthanasia Approved Curriculum; Recordkeeping; Inspection

A. The following organizations offer approved euthanasia courses: The American Humane Association; The National Animal Care and Control Association; Companion Animal Euthanasia Training Academy. The State Veterinarian reserves the right to approve or withdraw the approval of curricula at any time. Approved curriculum training shall include an instructional section and a practical exam showing skill competency; and shall include, but not be limited to, the following topics:
1. Anatomy;
2. Personnel safety, controlled substance diversion, and compassion fatigue;
3. Controlled substance handling and mechanism of action;
4. Humane methods of handling and euthanasia of domestic animals;
5. Methods to ensure barriers between animals during euthanasia;
6. Concepts particular to euthanasia of wild or feral animals;
7. Administering pre-euthanasia sedatives;
8. Verification of death; and
9. Acceptable methods of disposal of animal remains and euthanasia supplies.

B. The responsible person shall keep records of all euthanasia-related activities including, but not limited to:
1. Identification of animals euthanized;
2. Reason for euthanasia;
3. Method of euthanasia;
4. Adverse events; and
5. All recordkeeping required by the Controlled Substances Act.

C. A shelter is subject to periodic random inspection by the Office of the State Veterinarian. Upon request by the Office of the State Veterinarian, the responsible person or controlling person shall immediately produce records.

D. Following an audit or inspection, if evidence exists of non-compliance with the standards in this Section, the State Veterinarian reserves the right to modify the agreement. The State Veterinarian may also terminate the agreement, and notify the DEA that the shelter has lost approval by the State Veterinarian to administer euthanasia by unlicensed individuals.

Historical Note
New Section made by final rulemaking at 29 A.A.R. 1327 (June 9, 2023), effective July 8, 2023 (Supp. 23-2).

3-2002. Application for license to slaughter

Every person, including an exempt slaughterer, before he begins or carries on the slaughter of livestock, sheep, goats or swine for compensation, shall make written application to the division for a license to slaughter, stating that the applicant will comply with the law and will not slaughter animals, or sell, exchange, or expose for sale the meat thereof, except in conformity with the law relating thereto and the rules of the director.

3-2046. Meat inspection rules; violation; classification

A. The director shall adopt reasonable rules necessary to assure that all meat and meat products subject to inspection under this article which are to be sold or distributed for human consumption are free from unwholesome, poisonous or other foreign substances and filth, insects or disease causing organisms. The rules shall provide reasonably necessary measures governing the production, processing, labeling, storing, handling and transportation of such products. The rules shall prescribe minimum standards for the sanitary facilities and conditions which shall be maintained at any plant, packing house or abattoir and in any truck or other vehicle in which meat or meat products are produced, processed, stored, handled or transported.

B. The director upon the advice of the chief veterinary meat inspector shall adopt reasonable rules, including, but not limited to, what the antemortem and postmortem inspection shall consist of, to carry out the purposes of this chapter. The rules shall conform so far as possible to the rules governing meat inspection of the United States department of agriculture. To the extent deemed appropriate by the director the rules may incorporate by reference existing federal meat inspection regulations, but in no case shall the rules exceed the requirements of the United States department of agriculture. All rules adopted to implement this section shall be adopted in compliance with title 41, chapter 6.

3-2083. Authority of inspector to search for and seize unstamped meat

Inspectors may stop and search without warrant any vehicle, and may search without warrant any container which the inspector suspects contains unstamped meat, and if any is found it shall be taken by the inspector. Unless proof is submitted within twenty-four hours after such seizure which satisfies the inspector that the person from whom the meat was taken is the lawful owner thereof, such meat shall be forfeited to the state and sold or disposed of by the agency.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 4

Amend: R18-4-103, R18-4-603

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 4

Amend: R18-4-103, R18-4-603

Summary:

This expedited rulemaking from the Arizona Department of Environmental Quality (Department) seeks to amend two (2) rules in Title 18, Chapter 4. Chapter 4 covers Safe Drinking Water. One amendment is to change an outdated statutory reference in R18-4-103(B). The other amendment is for R18-4-603 with the proposal being to correct references to other Department rules, which is necessary because these references have been renumbered as a result of other Department rulemakings.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this portion of the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons; but amends rules that are outdated, and clarifies language of rules without changing their effects.

Council staff believes this rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(1) and (3). The rulemaking will remove a statutory reference to the repealed A.R.S. § 49-331 and the rulemaking will correct references to other rules because of changes that have occurred as a result of other Department rulemakings.

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates no changes were made between the proposed and final rulemaking.

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

The Safe Drinking Water Act, 42 U.S.C. §300f et seq., is applicable to these rules. However, the Department has indicated that the proposed rules are not more stringent than this corresponding federal law.

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

Not applicable. The Department has indicated that no permit or license is required or issued as part of these rules.

7. 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 any study relevant to this rulemaking.

8. Conclusion

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend two rules in Title 18, Chapter 4 for the purpose of fulfilling objectives from a previous 5 YRR and to correct terminology and references to statutes and other rules. The

substantive content of the rules will remain the same and will have improved clarity by updating the references.

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

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

December 11, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 4, 5, 9, and 11 – "Water Quality Rule Corrections"

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for February 4, 2025.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)
   A. The public record closed for all rules on October 7, 2024 at midnight.
   B. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemakings, additionally, fulfill the requirements under A.R.S. § 41-1027(A)(3), "correct[ing] typographical errors…or clarifies language of a rule without changing its effect"; (A)(4), "adopt[ing] or incorporat[ing] by reference without material change federal statutes or regulations; (A)(6), "amend[ing] or repeal[ing] rules that are outdated, redundant or otherwise no longer necessary for the operation of state government"; and (A)(7), "implement[ing], without material change, a course of action that is proposed in a five-year review report approved by the council".
   C. The rulemaking activities relate to the following five-year review reports:
      1. 18 A.A.C. 4, Art. 1, 2, 3, 6, & 8 (submitted February 28, 2022, approved October 4, 2022);
      2. 18 A.A.C. Ch. 5, Art. 1, 2, 3, 4, & 5 (submitted August 27, 2021, approved November 2, 2021);

3. 18 A.A.C. Ch. 9, Art. 2 (submitted January 20, 2021, approved April 6, 2021), Art. 9 (submitted April 26, 2022, approved August 2, 2022) ;

D. 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.

E. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:

1. This cover letter.
2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 4, 5, Chapter 9, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. ADEQ did not receive any written comments on the NPERMs for Chapters 4, 5, 9, or 11.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
    a. Chapter 4:
        i. Authorizing statutes (general): A.R.S. §§ 49-104(B)(4), 49-353(A)(2)
        ii. Implementing statutes (specific): A.R.S. § 49-353.01
    b. Chapter 5:
        i. Authorizing statutes (general): A.R.S. § 49-104(B)(11)-(13)
        ii. Implementing statutes (specific): A.R.S. §§ 49-352, 49-353(A)(2), 49-353.01(A)(1), and 49-361
    c. Chapter 9:
        i. Authorizing statutes (general): A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), and 49-255.02
    d. Chapter 11:
        i. Authorizing statutes (general): A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

II. Additional items required by GRRC:

A. Exemption Memo Request.

B. Governor's Office initial written approval.
C. Governor's Office final written approval.

Thank you for your timely review and approval. Please contact Trevor Baggiore, Division Director, Water Quality Division, 602-771-2321 or baggiore.trevor@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY – SAFE DRINKING WATER

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-4-103	Amend
R18-4-603	Amend

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

Authorizing statute: A.R.S. §§ 49-104(B)(4), 49-353(A)(2)

Implementing statute: A.R.S. § 49-353.01

4. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State.

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2087, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-104.

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2787, Issue Date: September 6, 2024, Issue Number: 36, File number: R24-165.

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

Name: Tiffany Tom

Title: Attorney

Division: Office of Administrative Counsel

Address: Arizona Department of Environmental Quality
Office of Administrative Counsel
1110 W. Washington Street
Phoenix, AZ 85007

Telephone: (520) 625-6355

Email: waterqualityrulecorrections@azdeq.gov

Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

Summary:

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 4; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 4, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to the safe drinking water program. An expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1) and 41-1027(A)(6). Under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace a repealed statute in a definition with a current and correct definition. Under A.R.S. § 41-1027(A)6), ADEQ proposes to update cross-references to other ADEQ rules that have changed due to previous rulemakings. Furthermore, none of the proposed amendments will increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

Section by Section Explanation of Proposed Rules:

R18-4-103(B): Incorporation of 40 CFR 141, Subpart A by reference and Definitions

This rule incorporates by reference 40 CFR 141, Subpart A, and establishes specific sections of Subpart A of the Code of Federal Regulations that are not incorporated by reference. The rule defines important terms in 18 A.A.C. Chapter 4 so that the rules are understandable to the general public. This rule also establishes which sections of the Code of Federal Regulations are modified to convey the proper context that Arizona is the regulator, not the EPA. In defining "protected water source," this rule contains an outdated reference to A.R.S. § 49-331, which was repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace the statutory reference with a reference to the correct definition found in R18-9-101(21).

R18-4-603(3): Infrastructure, Treatment, and Storage Design Requirements to Demonstrate Adequate Technical Capacity for New Public Water Systems

This rule contains references to applicable ADEQ rules which have since become outdated following previous recodifications of referenced Articles. The references to 18 A.A.C. 4, Articles 3 and 5 are now incorrect. The applicable infrastructure, treatment, and storage design requirements can now be found in 18 A.A.C. 4, Articles 1, 2, and 4 and 18 A.A.C. 5, Article 5. The following rulemakings impacted the outdated references:

1. In 2008, 18 A.A.C. 4, Article 3 was amended and treatment requirements were removed and replaced with the Monitoring Assistance Program rules. *See* 14 A.A.R. 2978, 2982 and 3015 (Aug. 1, 2008). Treatment requirements can now be found in 18 A.A.C. 4, Article 1 concerning the "National Primary Drinking Water Regulations" and Article 2 "Safe Drinking Water Regulations." *See* 14 A.A.R. 2978, 3013-3015 (Aug. 1, 2008).
2. In 2004, the minimum design criteria for public water systems (PWS) were recodified from 18 A.A.C. 4, Article 5 to 18 A.A.C. 5, Article 5. *See generally* 10 A.A.R. 585 (Feb. 20, 2004).
3. In 2023, ADEQ updated 18 A.A.C. 4 to conform with the EPA's final regulation entitled "Use of Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water," which applies to new PWSs. *See generally* 29 A.A.R. 1472 (Jun. 30, 2023).

Updating the references to the applicable infrastructure, treatment, and storage requirements for new PWSs serves to clarify the language of R18-4-603(3) by removing references that are no longer necessary for the operation of state government. Therefore, pursuant to its authority A.R.S. § 41-1027(A)(6), ADEQ proposes to amend the outdated references to the relevant ADEQ rules.

8. 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.

9. A showing 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.

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Agency did not receive any public comments on A.A.C. Title 18 Chapter 4.

13. 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:

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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 Safe Drinking Water Act, as amended, is applicable to the subject of this rule. *See* 42 U.S.C. § 300f et seq. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis 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 under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable.

15. 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) state where the text was changed between the emergency and the final expedited rulemaking package:

The rules were not previously made as an emergency rule.

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Section

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

Section

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

R18-4-103. General – 40 CFR 141, Subpart A

A. 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4- 102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.

B. The definition of "State" in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

"Air-gap separation" means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

"ANSI/NSF Standard 60" means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"ANSI/NSF Standard 61" means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769- 8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"Backflow" means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

"Backflow-prevention assembly" means a mechanical device used to prevent backflow.

"Capacity" means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

"Capacity development" means improving public water system finances, management, infrastructure, and operations, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

"Capacity development report" means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

"Cross connection" means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

"Distribution system" means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

"Department" means the Arizona Department of Environmental Quality.

"Double check valve assembly" means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

"Elementary business plan" means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

"Entry point to the distribution system" means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

"EPA" means the United States Environmental Protection Agency.

"Exclusion" means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

"Exemption" means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

"Financial capacity" means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

"Groundwater system" means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

"Lead-free" has the same meaning prescribed in A.R.S. § 49-353(B).

"Major stockholder" means a person who has 20% or more ownership interest in a public water system.

"Master priority list" means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

"Monitoring assistance program" means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

"Operational assistance" means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

"Protected water source" means a groundwater source that:

- Meets the requirements of A.A.C. R18-5- 502(D);
- Is not located within 100 feet of a drywell as defined by ~~A.R.S. § 49-331(3)~~ A.A.C. R18-9-101(21), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

"Reduced pressure principle backflow-prevention assembly" means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

"Service connection" means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

"Service line" means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

"State" means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term "State" means the Regional Administrator of EPA Region 9.

"System evaluation assistance" means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

"Technical assistance" means operational assistance, system evaluation assistance, or both.

"Treatment" means a process that changes the quality of water by physical, chemical, or biological means.

"Treatment technique" means a treatment procedure promulgated by EPA in lieu of an MCL.

"Variance" means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology treatment techniques, or other means available to the system.

"Water main" means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

"Water Infrastructure Finance Authority" means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

C. 40 CFR 141.4, entitled "variances and exemptions," is incorporated by reference subject to the following modifications:

1. The phrase "entity with primary enforcement responsibility" is changed to "Department."
2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
   a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
   b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.
   c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
   d. "Treatment technique requirement," for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
   e. If the Department grants a variance or exemption, the Department shall prescribe:
      i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
      ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.

D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4- 102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.

1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
2. 40 CFR 142.20(a), (b). The phrase “States with primary enforcement responsibility” is changed to “the Department”; the second sentences in 142.20(a) and 142.20(b) are deleted.
3. 40 CFR 142.60(b), 142.61(b). The phrase “Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances” is changed to “Department.”
4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase “a State that does not have primary enforcement responsibility” is changed to “Arizona”.
5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase “Administrator or [`primacy' or `primary'] state that issues variances” is changed to “Department.”
6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase “Administrator or [the] primacy state” is changed to “Department”; the phrase “Administrator's or primacy state's” is changed to “Department's.”
7. In 40 CFR 142, Subpart K:
    a. The phrases “[`a' or `the'] State or [the] Administrator,” “Administrator or State,” “the public water system, State and the Administrator,” and “a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)” are changed to “the Department.”
    b. 40 CFR 142.301. The last sentence is deleted.
    c. 40 CFR 142.303(b). The phrase “a State exercising primary enforcement responsibility for public water systems” is changed to “the Department.”
    d. 40 CFR 142.306(b)(2). The phrase “(or by the Administrator in States which do not have primary enforcement responsibility)” is deleted.
    e. 40 CFR 142.308(a), 142.309(c). The phrase “the State, Administrator, or [the] public water system as directed by the State or Administrator” is changed to “the Department or the public water system, as determined by the Department.”
    f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: “At the time of proposal, the Department must publish a notice in the Arizona Administrative Register or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section.”
    g. 40 CFR 142.308(c)(7). The phrase “the primacy agency” is changed to “the Department.”
8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term “Administrator” is changed to “Department”; the pronoun “he” is changed to “the Department”; and the pronoun “his” is changed to “the Department's.”
9. In all parts of 40 CFR 142 incorporated by reference, the term “a state” or “the state” is changed to “the Department”; the term “the State's” is changed to “the Department's.”
10. 40 CFR 142.62(h)(3). The term “State-approved” is changed to “Department-approved.”
11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401.”
12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1- 401.”
13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: “A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402.”

E. 40 CFR 141.5 is not incorporated by reference.

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles ~~2, 3, and 5~~ 1, 2, and 4, and Chapter 5, Article 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and
5. Documentation that contains at least the following:
   a. Day 1 to final build-out technical and engineering needs projections;
   b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
   c. Information describing the life of the plant;
   d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
   e. Manufacturers' specifications on components used in the construction of the water system; and
   f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specification.

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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

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 April 1, 2023 through June 30, 2023

Questions about these rules? Contact:

Department:	Arizona Department of Environmental Quality
Address:	1110 W. Washington St. Phoenix, AZ 85007
Website:	www.azdeq.gov
Name:	Laura Carusona, Safe Drinking Water Manager
Telephone:	(602) 771-0053
Email:	carusona.laura@azdeq.gov

The release of this Chapter in Supp. 23-2 replaces Supp. 16-1, 1-38 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. 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 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, 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.

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.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY - SAFE DRINKING WATER

Authority: A.R.S. § 49-104 et seq.

Supp. 23-2

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ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

Article 1, consisting of Sections R18-4-101 through R18-4-123, adopted effective April 28, 1995 (Supp. 95-2).

Article 1, consisting of R18-4-101 through R18-4-115, recodified to 18 A.A.C. Title 5, Article 1, R18-5-101 through R18-5-115 (Supp. 95-2).

ARTICLE 2. STATE DRINKING WATER REGULATIONS

Article 2, consisting of Sections R18-4-201 through R18-4-223 adopted effective April 28, 1995 (Supp. 95-2).

Article 2, consisting of Sections R18-4-201 through R18-4-290, repealed effective April 28, 1995 (Supp. 95-2).

Article 2 consisting of Sections R18-4-201 through R18-4-290, adopted effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R18-4-201 through R18-4-290 and Appendices 1-7, repealed effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R9-8-210 through R9-8-213, R9-8-220 through R9-8-227, R9-8-230 through R9-8-236, R9-8-250 through R9-8-253, R9-8-260 through R9-8-273, R9-8-290, and Appendices 1 through 6 renumbered as Article 2, Sections R18-4-210 through R18-4-213, R18-4-220 through R18-4-227, R18-4-230 through R18-4-236, R18-4-250 through R18-4-253, R18-4-260 through R18-4-273, R18-4-290, and Appendices 1 through 6 (Supp. 87-3).

ARTICLE 3. MONITORING ASSISTANCE PROGRAM

Article 3, consisting of Sections R18-4-301 thru R18-4-317, adopted effective April 28, 1995 (Supp. 95-2).

ARTICLE 4. OTHER SAFE DRINKING WATER ACT REGULATIONS

New Article 4, consisting of Section R18-1-402, made by final expedited rulemaking at 29 A.A.R. 1472 (June 30, 2023), with an immediate effective date of June 7, 2023 (Supp. 23-2).

Article 4, consisting of Sections R18-4-401 through R18-4-405, repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Article 4, consisting of Sections R18-4-401 thru R18-4-405, adopted effective April 28, 1995 (Supp. 95-2).

ARTICLE 5. RECODIFIED

Article 5 recodified to 18 A.A.C. 5, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Article 5, consisting of Sections R18-4-501 through R18-4-509, adopted effective April 28, 1995 (Supp. 95-2).

Appendices A, B, and C adopted effective April 28, 1995 (Supp. 95-2).

ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

Article 6, consisting of Sections R18-4-601 through R18-4-607, adopted by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Article 6, consisting of Sections R18-4-601 through R18-4-607, adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3).

ARTICLE 7. REPEALED

Article 7, consisting of Sections R18-4-701 through R18-4-710 and Appendices A and B, adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2).

ARTICLE 8. TECHNICAL ASSISTANCE

Article 8, consisting of Sections R18-4-801 through R18-4-804, made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS

R18-4-101. Authority and Purpose

A. This Chapter is created under the authority of A.R.S. Title 49, Chapter 2, Article 9, and the federal Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26.

B. The purposes of this Chapter include the following:

1. To protect the public health and welfare by ensuring that all potable water distributed or sold to the public by public water systems is free from unwholesome, poisonous, deleterious, or other foreign substances, and filth or disease-causing substances or organisms; and
2. To enable the state to maintain primary enforcement responsibility of the Safe Drinking Water Act, including the requirements of 40 CFR 141 and 142.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-4-101 recodified to R18-5-101 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

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

A. Unless otherwise specified in this Chapter, all references to regulations in 40 CFR 141 and 142 in this Chapter refer to the July 1, 2014, version of the regulations. Copies of the incorporated material are available for review at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, and are available from the U.S. General Printing office at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

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

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

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

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

Historical Note

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-4-102 recodified to R18-5-102 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-103. General – 40 CFR 141, Subpart A

A. 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4-102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.

B. The definition of "State" in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

"Air-gap separation" means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

"ANSI/NSF Standard 60" means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"ANSI/NSF Standard 61" means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; http://www.nsf.org. This incorporation by reference includes no future editions or amendments.

"Backflow" means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

"Backflow-prevention assembly" means a mechanical device used to prevent backflow.

"Capacity" means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

"Capacity development" means improving public water system finances, management, infrastructure, and operations, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

"Capacity development report" means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

"Cross connection" means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

"Distribution system" means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

"Department" means the Arizona Department of Environmental Quality.

"Double check valve assembly" means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

"Elementary business plan" means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

"Entry point to the distribution system" means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

"EPA" means the United States Environmental Protection Agency.

"Exclusion" means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

"Exemption" means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

"Financial capacity" means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

"Groundwater system" means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

"Lead-free" has the same meaning prescribed in A.R.S. § 49-353(B).

"Major stockholder" means a person who has 20% or more ownership interest in a public water system.

"Master priority list" means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

"Monitoring assistance program" means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

"Operational assistance" means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

"Protected water source" means a groundwater source that:

- Meets the requirements of A.A.C. R18-5-502(D);
- Is not located within 100 feet of a drywell as defined by A.R.S. § 49-331(3), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

"Reduced pressure principle backflow-prevention assembly" means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

"Service connection" means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

"Service line" means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

"State" means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term "State" means the Regional Administrator of EPA Region 9.

"System evaluation assistance" means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

"Technical assistance" means operational assistance, system evaluation assistance, or both.

"Treatment" means a process that changes the quality of water by physical, chemical, or biological means.

"Treatment technique" means a treatment procedure promulgated by EPA in lieu of an MCL.

"Variance" means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology,

treatment techniques, or other means available to the system.

"Water main" means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

"Water Infrastructure Finance Authority" means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

C. 40 CFR 141.4, entitled "variances and exemptions," is incorporated by reference subject to the following modifications:

1. The phrase "entity with primary enforcement responsibility" is changed to "Department."
2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
   a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
   b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.
   c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
   d. "Treatment technique requirement," for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
   e. If the Department grants a variance or exemption, the Department shall prescribe:
      i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
      ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.

D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4-102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.

1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
2. 40 CFR 142.20(a), (b). The phrase "States with primary enforcement responsibility" is changed to "the Department"; the second sentences in 142.20(a) and 142.20(b) are deleted.
3. 40 CFR 142.60(b), 142.61(b). The phrase "Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances" is changed to "Department."
4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase "a State that does not have primary enforcement responsibility" is changed to "Arizona".
5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase "Administrator or [`primacy' or `primary'] state that issues variances" is changed to "Department."
6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase "Administrator or [the] primacy state" is changed to "Department"; the phrase "Administrator's or primacy state's" is changed to "Department's."
7. In 40 CFR 142, Subpart K:
   a. The phrases "[`a' or `the'] State or [the] Administrator," "Administrator or State," "the public water system, State and the Administrator," and "a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)" are changed to "the Department."
   b. 40 CFR 142.301. The last sentence is deleted.
   c. 40 CFR 142.303(b). The phrase "a State exercising primary enforcement responsibility for public water systems" is changed to "the Department."
   d. 40 CFR 142.306(b)(2). The phrase "(or by the Administrator in States which do not have primary enforcement responsibility)" is deleted.
   e. 40 CFR 142.308(a), 142.309(c). The phrase "the State, Administrator, or [the] public water system as directed by the State or Administrator" is changed to "the Department or the public water system, as determined by the Department."
   f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: "At the time of proposal, the Department must publish a notice in the *Arizona Administrative Register* or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section."
   g. 40 CFR 142.308(c)(7). The phrase "the primacy agency" is changed to "the Department."
8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term "Administrator" is changed to "Department"; the pronoun "he" is changed to "the Department"; and the pronoun "his" is changed to "the Department's."
9. In all parts of 40 CFR 142 incorporated by reference, the term "a state" or "the state" is changed to "the Department"; the term "the State's" is changed to "the Department's."
10. 40 CFR 142.62(h)(3). The term "State-approved" is changed to "Department-approved."
11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially

interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401."

12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401."
13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: "A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402."

E. 40 CFR 141.5 is not incorporated by reference.

Historical Note

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-4-103 recodified to R18-5-103 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-103 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-104. Maximum Contaminant Levels – 40 CFR 141, Subpart B

40 CFR 141, Subpart B (40 CFR 141.11 through 141.13), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-4-104 recodified to R18-5-104 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Amended under R1-1-109(B) to correct a manifest clerical error; subsection R18-4-104(J)(3) moved to its proper place as subsection R18-4-104(K)(3); compare at 8 A.A.R. 3086, July 26, 2002 (Supp. 03-1). Section R18-4-104 renumbered to R18-4-211; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

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

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

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

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

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

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

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

1. Naturally occurring contaminants: gross alpha and beta, gross alpha, radium 226, radium 228, and uranium.
2. Man-made contaminants: radioactive cesium, radioactive iodine, radioactive strontium 89, 90, tritium, and gamma emitters."

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

H. 40 CFR 141.28:

1. In 40 CFR 141.28(a), the term "State" is changed to "Arizona Department of Health Services."
2. In 40 CFR 141.28(b), the term "State" is changed to "Arizona Department of Health Services or Arizona Department of Environmental Quality."
3. A new subsection (c) is added: "A laboratory that performs drinking water analysis in Arizona shall be certified by EPA or the Arizona Department of Health Services."

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-4-105 recodified to R18-5-105 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-105 renumbered from R18-4-105.01 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in part 4 of Table 2 corrected (Supp. 04-1). Section R18-4-105 and Tables 1 through 4 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-105.01. Renumbered

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). Section renumbered to R18-4-105 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-106. Reporting and Recordkeeping – 40 CFR 141, Subpart D

A. 40 CFR 141, Subpart D (40 CFR 141.31 through 141.35), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions. The requirements in the following subsections are in addition to the requirements of 40 CFR 141, Subpart D.

B. Department reporting forms. A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.

C. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-4-106 recodified to R18-5-106 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-106 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-107. Special Regulations, Including Monitoring - 40 CFR 141, Subpart E

40 CFR 141, Subpart E (40 CFR 141.40 through 141.42) revised as of July 1, 2021 and published by the Office of the Federal Register, National Archives and Records Administration is incorporated by reference. This rule does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the U.S. Government Publishing Office, bookstore.gpo.gov, P.O. Box. 979050, St. Louis, MO 63197-9000.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-107 recodified to R18-5-107 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-107 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final expedited rulemaking at 29 A.A.R. 1472 (June 30, 2023), with an immediate effective date of June 7, 2023 (Supp. 23-2).

R18-4-108. Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals – 40 CFR 141, Subpart F

40 CFR 141, Subpart F (40 CFR 141.50 through 141.55), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-4-108 recodified to R18-5-108 (Supp. 95-2). New Section R18-4-108 renumbered from R18-4-109 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-108 renumbered to R18-4-205; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-109. Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels – 40 CFR 141, Subpart G

40 CFR 141, Subpart G (40 CFR 141.60 through 141.66), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-4-109 recodified to R18-5-109 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Former Section R18-4-109 renumbered to R18-4-108; new Section R18-4-109 made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-109 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-110. Filtration and Disinfection – 40 CFR 141, Subpart H

A. 40 CFR 141, Subpart H (40 CFR 141.70 through 141.76), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. The text of 40 CFR 141.74(a) is replaced by the following: "*Analytical requirements*. In order to demonstrate compliance with the requirements of this Part, public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Part."

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-110 recodified to R18-5-110 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-110 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-111. Control of Lead and Copper – 40 CFR 141, Subpart I

A. 40 CFR 141, Subpart I (40 CFR 141.80 through 141.91), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. The first sentence of 40 CFR 141.89(a) is replaced by the following: "Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using analytical methods approved by EPA and the Arizona Department of Health Services. Analyses under this Section for lead and copper shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services."

C. The text of 40 CFR 141.89(a)(1) is not incorporated by reference.

Historical Note

Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-4-111 recodified to R18-5-111 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-111 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-112. Use of Non-Centralized Treatment Devices – 40 CFR 141, Subpart J

40 CFR 141.101 is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-4-112 recodified to R18-5-112 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-112 renumbered to R18-4-219; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-113. Treatment Techniques – 40 CFR 141, Subpart K

40 CFR 141, Subpart K (40 CFR 141.110 through 141.111), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-4-113 recodified to R18-5-113 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-113 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-114. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors – 40 CFR 141, Subpart L

A. 40 CFR 141, Subpart L (40 CFR 141.130 through 141.135), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.

B. 40 CFR 141.131 is not incorporated by reference.

C. In order to demonstrate compliance with the requirements of this Chapter:

1. Public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Chapter; and
2. Analyses of drinking water samples shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services.

D. A party approved by the Department shall measure daily chlorite samples at the entrance to the distribution system.

E. A public water system may measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using N,N-diethyl-p-phenylenediamine (DPD) colorimetric test kits. A party approved by the Department shall measure residual disinfectant concentration.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-4-114 recodified to R18-5-114 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-114 renumbered to R18-4-202; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-115. Renumbered

Historical Note

Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-4-115 recodified to R18-5-115 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-115 renumbered to R18-4-215 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-116. Renumbered

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-116 renumbered to R18-4-204 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-117. Consumer Confidence Reports – 40 CFR 141, Subpart O

40 CFR 141, Subpart O (40 CFR 141.151 through 141.155 and Appendix A), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-117 renumbered to R18-4-209; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-118. Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People – 40 CFR 141, Subpart P

40 CFR 141, Subpart P (40 CFR 141.170 through 141.175), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-118 renumbered to R18-4-208; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-119. Public Notification of Drinking Water Violations – 40 CFR 141, Subpart Q
40 CFR 141, Subpart Q (40 CFR 141.201 through 141.211 and Appendices A, B, and C), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note
Former Section R18-4-215 renumbered R18-4-119 pursuant to R1-1-404 effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-119 renumbered to R18-4-213; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-120. Renumbered

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-120 renumbered to R18-4-206 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-121. Ground Water Rule – 40 CFR 141, Subpart S
A. 40 CFR Part 141, Subpart S (40 CFR 141.400 through 141.405), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
B. 40 CFR 141.402(a)(4) is modified as follows:
Consecutive and wholesale systems.
(i) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample, collected under § 141.21(a) until March 31, 2016 or under §§ 141.854 through 141.857 beginning April 1, 2016, within 24 hours of being notified of the total coliform-positive sample must:
(A) Notify the wholesale system(s) and,
(B) Collect a sample from its consecutive connection with the wholesale ground water system and analyze it for a fecal indicator under paragraph (c) of this section.
(ii) If the sample collected under paragraph (a)(4)(i)(B) of this section is fecal indicator-positive, within 24 hours:
(A) The consecutive system must notify the wholesale ground water system, and
(B) Both systems must consult with the Department on additional sampling to meet the requirements of paragraph (a)(3) of this section.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-121 renumbered to R18-4-201; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-122. Enhanced Filtration and Disinfection – Systems Serving Fewer Than 10,000 People – 40 CFR 141, Subpart T
40 CFR 141, Subpart T (40 CFR 141.500 through 141.571), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-122 renumbered to R18-4-207; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Renumbered

Historical Note
New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed; new Appendix A made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Appendix A renumbered to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-123. Initial Distribution System Evaluations – 40 CFR 141, Subpart U
40 CFR 141, Subpart U (40 CFR 141.600 through 141.605), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-123 renumbered to R18-4-216; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-124. Stage 2 Disinfection Byproducts Requirements – 40 CFR 141, Subpart V
40 CFR 141, Subpart V (40 CFR 141.620 through 141.629), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note
Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-124 renumbered to R18-4-203; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-125. Enhanced Treatment For *Cryptosporidium* – 40 CFR 141, Subpart W
40 CFR 141, Subpart W (40 CFR 141.700 through 141.723), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note
Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-125 renumbered to R18-4-214; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y
A. 40 CFR Part 141, Subpart Y (40 CFR 141.851 through 141.861), is incorporated by reference as of the date specified in R18-4-102, subject to modifications specified in this Section; this incorporation does not include any later amendments or editions.
B. 40 CFR 141.851(d), 141.852, 141.853(c)(2), and 141.854(h)(2)(i) – (ii) are not incorporated by reference.

Historical Note
New Section made by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

Appendix A. Repealed

Historical Note
Appendix A renumbered from a position after R18-4-122 to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in Appendix A corrected (Supp. 04-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 2. STATE DRINKING WATER REGULATIONS

R18-4-201. Enforcement

A. A water supplier who constructs, operates, or maintains a public water system contrary to the provisions of this Chapter or fails to maintain the quality of water within the public water system as required by this Chapter is subject to the actions provided in A.R.S. §§ 49-142 and 49-354.

B. If the Department determines that a public water system is not in compliance with any of the provisions of this Chapter, the Department may issue an order to the water supplier that requires the public water system to make no further service connections or that limits the number of service connections until the Department determines that the public water system achieves compliance.

C. The Department may determine compliance or initiate enforcement action based upon analytical results and other information compiled by the Department or other federal, state, or local agencies.

D. The Department shall round compliance data to the same number of significant figures as the MCL in question to determine compliance with the MCL.

Historical Note
Former Section R9-8-212 repealed, new Section R9-8-212 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective November 2, 1982 (Supp. 82-6). Amended by renumbering subsections (P) thru (W) as (Q) thru (X) and adding a new subsection (P) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-212 renumbered without change as Section R18-4-212 (Supp. 87-3). Former Section R18-4-212 amended and renumbered as Section R18-4-201 effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-201 repealed; new Section renumbered from R18-4-121 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-202. Certified Operators

A water supplier of a public water system shall ensure that:

1. The water system is operated in accordance with 18 A.A.C. 5, Article 1.
2. The water system is operated by an operator who is properly certified pursuant to 18 A.A.C. 5, Article 1, to operate each water treatment plant in the system and the distribution system.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-202 repealed; new Section renumbered from R18-4-114 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-203. Operation and Maintenance

A water supplier shall maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply so as to comply with the requirements of this Chapter and 18 A.A.C. 5.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-203 renumbered to R18-4-210; new Section renumbered from R18-4-124 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-204. Emergency Operation Plans

A. The water supplier for a community water system shall develop and keep an emergency operations plan in an easily accessible location. At a minimum, the emergency operations plan shall detail the steps that the community water system will take to assure continuation of service in the following emergency situations:
1. Loss of a source;
2. Loss of water supply due to major component failure;
3. Damage to power supply equipment or loss of power;
4. Contamination of water in the distribution system from backflow;
5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
6. A break in a transmission or distribution line; and
7. Chemical or microbiological contamination of the water supply.

B. The emergency operations plan required by subsection (A) shall address all of the following:
1. Provision of alternate sources of water during the emergency;
2. Notice procedures for regulatory agencies, news media, and users;
3. Disinfection and testing of the distribution system once service is restored;
4. Identification of critical system components that shall remain in service or be returned to service quickly;
5. Critical spare parts inventory; and
6. Staff training in emergency response procedures.

C. In the event that an emergency situation that is listed in subsection (A) occurs, the Emergency Operation Plan shall be implemented by the community water system.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-204 repealed; new Section renumbered from R18-4-116 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-205. Sample Collection, Preservation, and Transportation

A public water system shall collect each sample using the sample preservation, container, and maximum holding time procedure prescribed by the Arizona Department of Health Services in 9 A.A.C. 14, Article 6, and approved by EPA for the analytical method used.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-205 repealed; new Section renumbered from R18-4-108 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-206. Monitoring and Sampling by the Department and MAP Contractors

A. The Department may take samples from a public water system. If the Department takes a sample at a public water system, the Department shall forward a copy of the analytical results to the water supplier.

B. If a public water system fails to monitor, the Department may monitor to determine compliance with MCLs. A public water system shall not use Department monitoring to satisfy monitoring requirements prescribed by this Chapter. This subsection does not apply to monitoring under the monitoring assistance program.

C. A contractor shall take compliance samples for the categories of contaminants listed in A.R.S. § 49-360(A) for a public water system that participates in the monitoring assistance program.

D. The sampling location for chemical contaminants must be the entry point to the distribution system or the compliance monitoring point specified by the Department, unless otherwise specified in this Chapter. An entry point to a distribution system is the point at which water is discharged into the distribution system from a well, storage tank, pressure tank, or water treatment plant.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-206 repealed; new Section renumbered from R18-4-120 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-207. Entry and Inspection of Public Water Systems

A. A Department inspection shall comply with A.R.S. § 41-1009.

B. 40 CFR 142.34(a) is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions. The phrase "Administrator" is changed to "Department."

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-207 repealed; new Section renumbered from R18-4-122 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-208. Sanitary Surveys

A. Each public water system shall undergo sanitary surveys in accordance with a schedule established by the Department, or when the Department determines that a sanitary survey is necessary to assure compliance with this Chapter.

B. A sanitary survey shall be performed for a public water system at least once every five years; however, a non-community water system using only protected and disinfected ground water shall have a sanitary survey performed at least every 10 years.

C. When establishing a sanitary survey schedule or determining that a sanitary survey is required prior to the next scheduled sanitary survey, the Department shall consider:
1. The quality and quantity of the source water; and
2. Whether the system is properly designed, maintained and operated.

D. Proper operation and maintenance means operating and maintaining the public water system in compliance with this Chapter; 18 A.A.C. 5, Article 5; and in conformance with the applicable portions of Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems," incorporated by reference in A.A.C. R18-5-502.

E. The Department shall review the results of a sanitary survey to determine whether the existing monitoring frequency is adequate, and whether any additional measures are required in order to ensure that the system will remain in compliance with this Chapter.

F. In conducting a sanitary survey of a groundwater system, information on sources of contamination within a delineated wellhead protection area shall be considered by the Department instead of collecting new information, if the information was collected since the last time the system was subject to a sanitary survey.

G. A water supplier shall make the changes to the design, operation, and maintenance of the public water system specified by the Department in order to bring the system into compliance with the requirements of this Chapter, and shall make the changes within the time limits set by the Department.

H. A sanitary survey of a public water system shall be made by a representative of the Department, a professional engineer or sanitarian who is registered in Arizona, a certified water system operator, or other person approved by the Department.

I. A sanitary survey shall comply with A.R.S. § 41-1009 when conducted by the Department.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-208 repealed; new Section renumbered from R18-4-118 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-209. Unsafe Supplies

The Department may order a public water system to disconnect a source to protect the public health from an acute health risk that is attributable to the source. An acute health risk is posed when one of the following occurs:
1. A violation of a MCL for total coliform and fecal coliform or *E. coli* are present that is attributable to the source,
2. A violation of the MCL for nitrate or nitrite that is attributable to the source, or
3. An occurrence of a waterborne disease outbreak that is attributable to the source.

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-209 repealed; new Section renumbered from R18-4-117 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-210. Total Coliform; Special Events

A. A water system that does not meet the definition of a public water system, but serves a large number of persons for a short

duration of time, such as a special event, must take corrective action as required in R18-4-126 after receiving a positive coliform result, including taking additional samples until all samples test negative for total coliform and negative for E.coli if:

1. The total number of user-days exceeds 600.
2. A user-day is calculated by multiplying the number of days the event will run by the average number of persons expected to be served each day.

B. The water system shall submit a minimum of two sample results to the Department at least seven days before the beginning of the special event. The water system shall submit a minimum of one additional sample result to the Department for each day of the special event.

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (C) and added subsection (D) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-210 renumbered without change as Section R18-4-210 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-210 renumbered from R18-4-203 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-211. Reporting Requirements

A. Cross connection incidents. A public water system shall submit a written cross connection incident report to the Department and the local county health department within five days of the occurrence of a cross connection problem that results in contamination of water provided by the public water system. The report shall address all of the following:

1. Date and time of discovery of the cross connection incident,
2. Nature of the cross connection incident,
3. Affected area,
4. Cause of the cross connection incident,
5. Public health impact,
6. Date and text of any public health advisory issued,
7. Corrective action taken, and
8. Date of completion of corrective action.

B. Emergencies. A public water system shall notify the Department, by telephone or facsimile, as soon as possible but no later than 24 hours after the occurrence of any of the following emergencies:

1. Loss of water supply from a source;
2. Loss of water supply due to major component failure;
3. Damage to power supply equipment or loss of power;
4. Contamination of water in the distribution system from backflow;
5. Collapse of a reservoir, reservoir roof, or pumphouse structure;
6. Break in a transmission or distribution line that results in a loss of service to customers for more than four hours; and
7. Chemical or microbiological contamination of the water supply.

C. Waterborne disease outbreak. A public water system shall report to the Department the occurrence of a waterborne disease outbreak that may be attributable to water provided by the public water system as soon as possible but no later than 24 hours after the public water system receives actual notice of the waterborne disease outbreak.

D. Department requests for records. A public water system shall submit to the Department, within the time stated in the Department's request, copies of any records that the public water system is required to retain under this Chapter or copies of any documents that the Department is entitled to inspect under 42 U.S.C. 300j-4 (2001).

E. Department reporting forms. A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.

F. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

G. Forty eight-hour reporting requirement. A public water system shall report the failure to comply with any of the provisions of this Chapter to the Department within 48 hours, except where a different reporting period is specified in this Chapter.

Historical Note

Corrected A.R.S. reference (Supp. 77-3). Amended effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-211 renumbered without change as Section R18-4-211 (Supp. 87-3). Amended effective Dec. 1, 1988 (Supp. 88-4). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-211 repealed; new Section renumbered from R18-4-104 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-212. Groundwater Under the Direct Influence of Surface Water

A. The Department suspects the following sources to be groundwater under the direct influence of surface water:

1. A spring;
2. An infiltration gallery;
3. A radial well collector, Ranney well, or horizontal well;
4. A well that is less than 500 feet from a surface water, and:
   a. The Department conducts a vulnerability assessment and determines that the source is vulnerable to direct surface water influence, or
   b. The Department cannot assess the vulnerability of the groundwater source to direct surface water influence because of a lack of information or the uncertainty of available information on the local hydrogeology or well construction characteristics;
5. A shallow well with perforations or well screens that are less than 50 feet below the ground surface;
6. A hand-dug or auger-bored well without a casing;
7. A groundwater source for which turbidity data is available that shows that the groundwater violates an interim MCL for turbidity;
8. A groundwater source for which data is available that shows that total coliform, fecal coliform, or *E. Coli* are present in untreated groundwater from the source that are not related to new well development, source modification, repair, or maintenance; and

9. Any groundwater source if the temperature of the groundwater fluctuates 15% to 20% from the mean groundwater temperature over the course of a year or if changes in the temperature of the groundwater correlate to similar changes in the temperature of surface water.

B. The Department shall conduct a sanitary survey of each public water system that the Department suspects is using a groundwater source under the direct influence of surface water.

C. The Department shall provide written notice to a public water system that the Department suspects a groundwater source is under the direct influence of surface water. A public water system may submit information to the Department to show that a groundwater source is not under the direct influence of surface water. Information that is submitted to show that a suspect groundwater source is not under the direct influence of surface water shall be in writing and shall be prepared by a qualified professional, such as a professional engineer registered in Arizona, registered geologist, water system operator, or hydrogeologist. The Department shall review any information submitted by a qualified professional to show a suspect groundwater source is not under the direct influence of surface water within 90 days after receipt of the information and determine if the source remains suspect.

D. If a groundwater source continues to be suspect after the analyses required in subsections (A) through (C), the Department may require a public water system that is suspected of using a groundwater source that is under the direct influence of surface water to conduct Microscopic Particle Analysis (MPA) monitoring of the groundwater source. A public water system may request that the Department allow the system to use an alternative method to determine whether a groundwater source is under the direct influence of surface water. An alternative method to determine whether a groundwater source is under the direct influence of surface water shall be approved by the Arizona Department of Health Services under 9 A.A.C. 14, Article 6.

E. A public water system shall conduct MPA monitoring as follows:

1. Each sample shall be representative of the groundwater source. A public water system shall not take a sample of blended water or a sample of water from the distribution system.
2. Each sample shall be collected and analyzed according to the procedures prescribed in the "Consensus Method for Determining Groundwaters Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)," EPA 910/9-92-029, United States Environmental Protection Agency, Environmental Services Division, Manchester Environmental Laboratory, 7411 Beach Dr. E., Port Orchard, WA 98366, October 1992 (and no future editions or amendments), which is incorporated by reference and on file with the Department.
3. The Department shall schedule MPA monitoring at a time when the groundwater source is most susceptible to direct surface water influence.
4. The Department shall use the MPA risk ratings in Table 1 to determine whether groundwater is under the direct influence of surface water.
   a. If the MPA risk rating of the initial sample indicates a high or moderate risk of direct surface water influence, the public water system shall collect a second sample for MPA at the same location on a date scheduled by the Department. If the MPA risk rating of the second sample indicates a high or moderate risk of direct surface water influence, the Department shall determine that the groundwater is under the direct influence of surface water. If the risk rating of the second sample indicates a low risk of direct surface water influence, the public water system shall collect a third sample for MPA at the same location on a date scheduled by the Department. If a third sample is taken, the Department shall determine whether the groundwater is under the direct influence of surface water under subsection (E)(4)(c).
   b. If the MPA risk rating of the initial sample indicates a low risk of direct surface water influence, the public water system shall collect a second sample for MPA at the same location on a date scheduled by the Department. If the MPA risk rating of the second sample indicates a low risk of direct surface water influence, the Department shall determine that the groundwater is not under the direct influence of surface water. If the MPA risk rating of the second sample indicates a high or moderate risk of direct surface water influence, the public water system shall collect a third sample for MPA at the same location on a date scheduled by the Department. If a third sample is taken, the Department shall determine whether the groundwater is under the direct influence of surface water under subsection (E)(4)(c).
   c. If a third sample is required and the MPA risk rating of the third sample indicates a high or moderate risk of direct surface water influence, the Department shall determine that the groundwater is under the direct influence of surface water. If the MPA risk rating of the third sample indicates a low risk of direct surface water influence, the Department shall determine that the groundwater is not under the direct influence of surface water.

F. If the Department determines a source to be groundwater under the direct influence of surface water under subsection (E) and a public water system demonstrates to the Department that it is feasible to take corrective action to prevent direct surface water influence, the Department shall establish a schedule of compliance for the public water system to take corrective action instead of requiring installation of filtration and disinfection treatment. A schedule of compliance to take corrective action shall require:

1. Completion of corrective action no later than 18 months after receipt of the initial MPA monitoring results, and
2. A second round of MPA monitoring to determine whether the source is under the direct influence of surface water after completion of the corrective action.

G. Except as provided in subsection (F), a public water system with a source that the Department determines to be groundwater under the direct influence of surface water shall provide filtration and disinfection required under 40 CFR 141 Subparts H, P, and T, as incorporated by reference in this Chapter, within 18 months after the date that the Department makes the final determination that the groundwater is under the direct influence of surface water.

H. The Department shall provide a written notice to a public water system of a final determination that a groundwater source is under the direct influence of surface water. The notice shall contain the information required by A.R.S. § 41-1092.03(A).

I. A public water system may appeal a final determination that a groundwater source is under the direct influence of surface water by serving notice of appeal with the Department under the Uniform Administrative Hearing Procedures in A.R.S. Title 41, Chapter 6, Article 10. A public water system shall file notice of appeal with the Department within 30 days after receiving notice of the Department's determination that a groundwater source is under the direct influence of surface water. The Department shall notify the Office of Administrative Hearings which shall schedule a hearing on the appeal within 60 days after the date that notice of appeal is filed with the Department. Hearings shall be conducted according to the Uniform Administrative Hearing Procedures in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-212 repealed; new Section renumbered from R18-4-301.01 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Decision Matrix for Determining Groundwater Under the Direct Influence of Surface Water

Initial Sample MPA Risk Rating	Second Sample MPA Risk Rating	Third Sample MPA Risk Rating	Groundwater Under the Direct Influence of Surface Water
High	High or Moderate		Yes
High	Low	High or Moderate	Yes
High	Low	Low	No
Moderate	High or Moderate		Yes
Moderate	Low	High or Moderate	Yes
Moderate	Low	Low	No
Low	High or Moderate	High or Moderate	Yes
Low	High or Moderate	Low	No
Low	Low		No

Historical Note

New Table 1 renumbered from R18-4-301.01, Table 1 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-213. Standards for Additives, Materials, and Equipment

A. Each product added directly to water during production or treatment shall conform to ANSI/NSF Standard 60. Products covered by this subsection include but are not limited to:

1. Coagulation and flocculation chemicals;
2. Chemicals for corrosion and scale control;
3. Chemicals for softening, precipitation, sequestering, and pH adjustment;
4. Disinfection and oxidation chemicals;
5. Chemicals for fluoridation, defluoridation, algae control, and dechlorination;
6. Dyes and tracers;
7. Antifreezes, antifoamers, regenerants, and separation process scale inhibitors and cleaners; and
8. Water well drilling and rehabilitation aids.

B. Except as identified in subsections (D) and (E), a material or product installed after January 1, 1993, that comes into contact with water or a water treatment chemical shall conform to ANSI/NSF Standard 61. Products and materials covered by this subsection include but are not limited to:

1. Process media, such as carbon and sand;
2. Joining and sealing materials, such as solvents, cements, welding materials, and gaskets;
3. Lubricants;
4. Pipes and related products, such as tanks and fittings;
5. Mechanical devices used in treatment, transmission, or distribution systems such as valves, chlorinators, and separation membranes; and
6. Surface coatings and paints.

C. Evidence that a product conforms to the requirements of this Section shall be the appearance on the product or product package of a seal of a certifying entity that is accredited by the American National Standards Institute to provide the certification.

D. *Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section. ... In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:*

1. *Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.*
2. *Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.*
3. *Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.*
4. *Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.*
5. *Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.* A.R.S. §§ 49-353.01(B) and (C) (2006).

E. The Department exempts the following materials and products from the requirement to conform to ANSI/NSF Standard 61:

1. A concrete structure, tank, or treatment tank basin that is constructed onsite if the structure, tank, or basin is not normally coated or sealed and the construction materials used in the concrete are consistent with subsection (D). If a coating or sealant is specified by the design engineer, the coating or sealant shall comply with ANSI/NSF Standard 61;
2. An earthen reservoir or canal located upstream of water treatment;
3. A water treatment plant that is comprised of components that comply with subsections (B), (C), and (D);
4. A synthetic tank constructed of material that meets Food and Drug Administration standards for a material that comes into contact with drinking water or aqueous food, or a galvanized steel tank, either of which is:
   a. Less than 15,000 gallons in capacity, and
   b. Used in a public water system with 500 or fewer service connections; or
5. A pipe, treatment plant component, or water distribution system component made of lead-free stainless steel.

Historical Note

Former Section R9-8-213 repealed, new Section R9-8-213 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-213 renumbered without change as Section R18-4-213 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-213 repealed; new Section renumbered from R18-4-119 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214. Hauled Water

A. All hauled water for delivery to a public water system shall be obtained from a source that is approved pursuant to 18 A.A.C. 5, Article 5, or a regulated public water system.

B. Materials or products that come into contact with the water shall comply with R18-4-213(B).

C. Roof hatches shall be fitted with a watertight cover.

D. A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided.

E. Hoses that are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.

F. A water hauler shall, at all times, maintain a residual free chlorine level of 0.2 mg/l to 1.0 mg/l in the water that is hauled in a water transport container. A chlorine disinfectant shall be added at the time water is loaded into the container. The residual free chlorine level shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions and residual-free chlorine measurements. Such records shall be maintained for at least three years and made available to the Department for review upon request.

G. A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled "For Drinking Water Use Only."

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-214 repealed; new Section renumbered from R18-4-125 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214.01. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-214.01 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-214.02. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective January 1, 2004 (Supp. 02-3). R18-4-214.02 including Table 1 and Table 2 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-215. Backflow Prevention

A. A public water system shall protect its system from contamination caused by backflow through unprotected cross-connections by requiring the installation and periodic testing of backflow-prevention assemblies. Required backflow-prevention assemblies shall be installed as close as practicable to the service connection.

B. A public water system shall ensure that a backflow-prevention assembly is installed whenever any of the following occur:
1. A substance harmful to human health is handled in a manner that could permit its entry into the public water system. These substances include chemicals, chemical or biological process waters, water from public water supplies that has deteriorated in sanitary quality, and water that has entered a fire sprinkler system. A Class 1 or Class 2 fire sprinkler system is exempt from the requirements of this Section;
2. A source of water supply exists on the user's premises that is not accepted as an additional source by the public water system or is not approved by the Department;
3. An unprotected cross-connection exists or a cross-connection problem has previously occurred within a user's premises; or
4. There is a significant possibility that a cross-connection problem will occur and entry to the premises is restricted to the extent that cross-connection inspections cannot be made with sufficient frequency or on sufficiently short notice to ensure that unprotected cross-connections do not exist.

C. Unless a cross-connection problem is specifically identified, or as otherwise provided in this Section, the requirements of this Section shall not apply to single-family residences used solely for residential purposes.

D. A backflow-prevention assembly required by this Section shall comply with the following:
1. If equipped with test cocks, it shall have been issued a certificate of approval by:
   a. The University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC-FCCCHR), or
   b. A third-party certifying entity that is unrelated to the product's manufacturer or vendor, and is approved by the Department.
2. If not equipped with test cocks, it shall be approved by a third-party certifying entity that is unrelated to the prod-

uct's manufacturer or vendor and is approved by the Department.

E. The minimum level of backflow protection that is provided to protect a public water system shall be the level recommended in Section 7.2 of the Manual of Cross-Connection Control, Ninth Edition, USC-FCCCHR, KAP-200 University Park MC-2531, Los Angeles, CA, 90089-2531, December 1993, (and no future editions or amendments), incorporated by reference and on file with the Department. The types of backflow prevention that may be required, listed in decreasing order according to the level of protection they provide, include: an air-gap separation (AG), a reduced pressure principle backflow prevention (RP) assembly, a pressure vacuum breaker (PVB) assembly, and a double check valve (DC) assembly. Nothing contained in this Section shall prevent a public water system from requiring the use of a higher level of protection than the level required by this subsection.

1. A public water system may make installation of a required backflow-prevention assembly a condition of service. A user's failure to comply with this requirement shall be sufficient cause for the public water system to terminate water service.
2. Specific installation requirements for backflow prevention include the following:
   a. Any backflow prevention required by this Section shall be installed in accordance with the manufacturer's specifications.
   b. For an AG installation, all piping between the user's connection and the receiving tank shall be entirely visible unless otherwise approved in writing by the public water system.
   c. An RP assembly shall not be installed in a meter box, pit, or vault unless adequate drainage is provided.
   d. A PVB assembly may be installed for use on a landscape water irrigation system if the irrigation system conforms to all of the criteria listed below. An RP assembly is required whenever any of the criteria are not met.
      i. The water use beyond the assembly is for irrigation purposes only;
      ii. The PVB is installed in accordance with the manufacturer's specifications;
      iii. The irrigation system is designed and constructed to be incapable of inducing backpressure; and
      iv. The injection of chemical pesticides and fertilizers, chemigation, is not used or provided in the irrigation system.

F. Each backflow-prevention assembly required by this Section shall be tested at least annually, or more frequently if directed by the public water system or the Department. Each assembly shall also be tested after installation, relocation, or repair. An assembly shall not be placed in service unless it has been tested and is functioning as designed. The following provisions shall apply to the testing of backflow-prevention assemblies:

1. Testing shall be in accordance with procedures described in Section 9 of the Manual of Cross-Connection Control. The public water system shall notify the water user when testing of backflow-prevention assemblies is needed. The notice shall specify the date by which the testing must be completed and the results forwarded to the public water system.
2. Testing shall be performed by a person who is currently certified as a "general" tester by the California-Nevada Section of the American Water Works Association (CA-NV Section, AWWA), the Arizona State Environmental Technical Training (ASETT) Center, or other certifying authority approved by the Department.
3. When a backflow-prevention assembly is tested and found to be defective, it shall be repaired or replaced in accordance with the provisions of this Section.

G. A public water system shall maintain records of backflow-prevention assembly installations and tests performed on backflow-prevention assemblies in its service area. Records shall be retained by the public water system for at least three years and shall be made available for review by the Department upon request. These records shall include an inventory of backflow-prevention assemblies required by this Section and, for each assembly, all of the following information:

1. Assembly identification number and description,
2. Location,
3. Date of tests,
4. Description of repairs and recommendations for repairs made by the tester, and
5. The tester's name and certificate number.

H. A public water system shall submit a written cross-connection incident report to the Department and the local health authority within five business days after a cross-connection problem occurs that results in contamination of the public water system. The report shall address all of the following:

1. Date and time of discovery of the unprotected cross-connection,
2. Nature of the cross-connection problem,
3. Affected area,
4. Cause of the cross-connection problem,
5. Public health impact,
6. Date and text of any public health advisory issued,
7. Each corrective action taken, and
8. Date of completion of each corrective action.

I. An individual with direct responsibility for implementing a backflow prevention program for a water system serving more than 50,000 persons, or an individual with direct responsibility for implementing a backflow prevention program for a for a water system serving 50,000 or fewer persons if the Department has determined that such a need exists, shall be licensed as a "cross-connection control program specialist" by the CA-NV Section, AWWA, the ASETT Center, or another certifying authority approved by the Department.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-215 repealed; new Section renumbered from R18-4-115 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-216. Vending Machines

An owner of a water vending machine shall be responsible for the proper operation of each water vending machine. The owner shall do all of the following:

1. Clean and maintain each water vending machine according to the manufacturer's recommendations;
2. Retain maintenance and cleaning records for one year;
3. Have analyses performed at least once every six months for total coliform bacteria. Results of such analyses shall be retained for one year. If a sample is positive for total

coliform, the water vending machine shall be removed from service, and all components shall be cleaned, replaced, or serviced. The water vending machine shall not be placed back into service until another total coliform bacteria analysis is performed and the result is negative; and

4. Maintain in operable condition all ultraviolet, ozone, or other disinfection components and automatic disabling capabilities built into the vending machine for use in the event of a disinfection system malfunction.

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-216 repealed; new Section renumbered from R18-4-123 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-217. Use of Blending to Achieve Compliance with Maximum Contaminant Levels

A. A public water system may use blending to achieve compliance with a MCL if all of the following requirements are met:

1. The public water system has obtained the Department's written approval for a blending plan that includes the following elements:
   a. Detailed drawings and schematics that show flow, concentrations, and controls;
   b. Proposed automatic or electronic devices that will be incorporated to ensure that the blend remains in the desired range or shuts off the offending source or triggers an alarm when the blend falls out of the desired range;
   c. Individual test results from all sources proposed to be blended;
   d. Projected contaminant levels that will result from blending that show both best-case and worst-case scenarios;
   e. Identified techniques, and any other information requested by the Department, that show how the blending plan will produce water that will comply with MCLs; and
2. The public water system has obtained the Department's written approval for a monitoring program designed to verify continued compliance with MCLs at all subsequent downstream service connections. This program shall include monitoring on at least a quarterly basis of both of the following:
   a. All sources contributing to the blend; and
   b. Blended water to ensure that the provisions of this Section are met.

B. A public water system shall submit an amended blending plan to the Department to confirm that the new blend achieves compliance with MCLs whenever sources are added to or removed from service or the relative flow rates from blended sources are changed in a way that changes the blend.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-217 repealed; new Section renumbered from R18-4-221 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-218. Criteria and Procedures for Public Water Systems Using Point-of-Entry or Point-of-Use Treatment Devices

A. A water supplier may use a point-of-entry (POE) or point-of-use (POU) treatment technology to achieve compliance with a MCL or treatment technique if the water supplier meets the requirements of this Section.

B. A public water system may use a POE or POU treatment device to achieve compliance with a MCL, if the treatment device:

1. Is not used to achieve compliance with an MCL or treatment technique for a microbial contaminant or an indicator for a microbial contaminant, in accordance with 42 U.S.C. 300g-1(b)(4)(E)(ii) (2007);
2. Is listed in 40 CFR 141 as an acceptable compliance technology for the applicable contaminant;
3. Is certified against the applicable NSF/ANSI Standards;
4. Is owned, controlled and maintained by a public water system or by a person under contract with the public water system to ensure proper operation, maintenance, and compliance with MCLs or treatment techniques; and
5. Is equipped with mechanical warnings to ensure that customers are automatically notified of recommended system maintenance and or operational problems. This performance indication device shall provide notice to the end user at a defined moment in time without shutting off the POE or POU device.

C. Prior to installing a POE or POU treatment device, a public water system shall obtain the Department's written approval of a POE or POU operation and maintenance (O & M) plan. A public water system shall submit an O & M plan to the Department that ensures proper long-term operation, maintenance, and monitoring of the POE or POU treatment devices. An O & M plan shall ensure that:

1. The POE or POU treatment device provides health protection equivalent to the health protection provided by centralized water treatment. "Equivalent" means that water treated by the POE or POU treatment device meets all national primary drinking water regulations.
2. A residential building, or a nonresidential building that uses water for human consumption, that is connected to the public water system has a POE or POU treatment device that is installed, operated, maintained, and monitored in a manner that assures continuous compliance with the MCLs, treatment techniques, and other requirements of this Chapter.
3. Multi-unit residential and nonresidential buildings utilizing POU treatment devices to achieve compliance with this Chapter have a sufficient number of POU devices installed to provide adequate potable water for all residents, employees, and customers.
4. The rights and responsibilities of persons served by the public water system are conveyed with the title upon the sale of property containing a POU treatment device, including but not limited to the following:
   a. The public water system owns and is responsible for maintaining a POU treatment device that is installed to meet the requirements of this Section; and
   b. Persons served by public water systems must grant public water system employees reasonable access to POU treatment devices, so that the devices can be properly maintained. Public water systems may discontinue water service to a customer who refuses to

allow public water system employees to enter the customer's home or business to inspect and maintain POU treatment devices.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-218 repealed; new Section renumbered from R18-4-222 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-219. Exclusions

A. A water supplier may request an exclusion from any requirement contained in this Chapter if such requirement is not also a requirement contained in a federal drinking water law. The Department shall consider the application of a water supplier for an exclusion from compliance with portions of this Chapter if the water supplier satisfactorily demonstrates that:

1. The request is not for a requirement that could be the subject of a variance or exemption under R18-4-103;
2. The request is not for requirements relating to turbidity, nitrate, or microbiological contaminants; and
3. The exclusion will not result in unreasonable risk to public health.

B. An application for an exclusion shall contain the following information:

1. The nature and duration of the exclusion requested,
2. Analytical results of water quality sampling of the water system including tests conducted as required by this Chapter,
3. An explanation and submittal of evidence that the exclusion will not result in an unreasonable risk to public health, and
4. Other information that the applicant believes to be pertinent or that the Department requires.

C. The Department shall take the following action on the application:

1. If the Department grants the request for an exclusion, it shall notify the applicant of that decision in writing within 90 days of receipt of the application. Such notice shall identify the facility covered, the conditions and requirements of the exclusion, including control measures, and that the exclusion may be terminated upon a finding that the water system has failed to comply with any conditions or requirements of the exclusion.
2. If the Department determines that an exclusion is not justified, it shall notify the applicant of the intention of denial within 90 days of receipt of the application, indicating the reasons for the proposed denial, and shall offer the applicant an opportunity to submit additional information to the Department within 30 days of the notice of intention to deny application. The Department shall make a final determination and notify the applicant within 30 days after receiving such additional information. If no additional information is submitted, the application shall be denied.

D. In addition to reviewing a request submitted by a water supplier, the Department may, on its own initiative, grant exclusions to water systems, either individually or on a group basis, if the exclusions meet criteria prescribed in subsection (A).

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-219 repealed; new Section renumbered from R18-4-112 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-220. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-220 renumbered without change as Section R18-4-220 (Supp. 87-3). Section repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-220 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-221. Renumbered

Historical Note

Former Section R9-8-221 repealed, new Section R9-8-221 adopted effective May 26, 1978 (Supp. 78-3). Correction, subsection (D), paragraph (2), subparagraph (b), drinking water standard for silvex, should read 0.01 mg/l as amended effective May 26, 1978 (Supp. 82-3). Amended subsection (D) effective November 2, 1982 (Supp. 82-6). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-221 renumbered without change as Section R18-4-221 (Supp. 87-3). Amended and new subsections (F) and (G) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-221 renumbered to R18-4-217 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-222. Renumbered

Historical Note

Former Section R9-8-222 repealed, new Section R9-8-222 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-222 renumbered without change as Section R18-4-222 (Supp. 87-3). Amended and new subsections (C) and (D) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-222 renumbered to R18-4-218 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-223. Use of Bottled Water

A. A public water system may use bottled water on a temporary basis to avoid an unreasonable risk to health. A public water

system shall not use bottled water to achieve compliance with a MCL.

B. If a public water system uses bottled water to avoid an unreasonable risk to health, the public water system is responsible for the provision of sufficient quantities of bottled water to every person served by the public water system via door-to-door bottled water delivery.

C. A public water system that uses bottled water as a condition for receiving a variance or an exemption shall comply with the following:

1. The public water system shall develop and put in place a monitoring program approved by the Department that provides reasonable assurances that the bottled water meets applicable MCLs. The public water system shall monitor a representative sample of the bottled water to determine compliance with applicable MCLs during the first three-month period that it supplies the bottled water to the public and annually thereafter. Results of the bottled water monitoring program shall be provided to the Department annually; or
2. The public water system shall receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 165.110, 21 CFR 110, and 21 CFR 129. The public water system shall provide the certification to the Department in the first quarter after it supplies bottled water and annually thereafter. The Department may waive the certification requirements prescribed in this subsection if an approved monitoring program is already in place in another state; and
3. The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person served by the public water system via door-to-door bottled water delivery.

Historical Note

Former Section R9-8-223 repealed, new Section R9-8-223 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (D), paragraph (4) effective November 2, 1982 (Supp. 82-6). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-223 renumbered without change as Section R18-4-223 (Supp. 87-3). Amended and a new subsection (F) added effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

R18-4-224. Renumbered

Historical Note

Former Section R9-224 repealed, new Section R9-8-224 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-224 renumbered without change as Section R18-4-224 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-224 renumbered to R18-4-301 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-225. Renumbered

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-225 renumbered without change as Section R18-4-225 (Supp. 87-3). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-225 renumbered to R18-4-304 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-226. Renumbered

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-226 renumbered without change as Section R18-4-226 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3). New Section adopted effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-226 renumbered to R18-4-305 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-227. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-3-227 renumbered without change as Section R18-4-227 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-228. Repealed

Historical Note

Adopted effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-229. Repealed

Historical Note

Adopted effective June 30, 1989 (Supp. 89-2). Former Section R18-4-224 repealed effective August 8, 1991 (Supp. 91-3).

R18-4-230. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-230 renumbered without change as Section R18-4-230 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-231. Repealed

Historical Note

Former Section R9-8-231 repealed, new Section R9-8-231 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-231 renumbered without change as Section R18-4-231 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-232. Repealed

Historical Note

Former Section R9-8-232 repealed, new Section R9-8-232 adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-232 renumbered without change as Section R18-4-232 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-233. Repealed

Historical Note

Former Section R9-8-233 repealed, new Section R9-8-232 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-233 renumbered without change as Section R18-4-233 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-234. Repealed

Historical Note

Former Section R9-8-234 repealed, new Section R9-8-234 adopted effective May 26, 1978 (Supp. 78-3). Amended effective Feb. 20, 1980 (Supp. 80-1). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-234 renumbered without change as Section R18-4-234 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-235. Repealed

Historical Note

Adopted effective January 6, 1984 (Supp. 84-1). Former Section R9-8-235 renumbered without change as Section R18-4-235 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-236. Repealed

Historical Note

Adopted effective January 6, 1984 (Supp. 84-1). Former Section R9-8-236 renumbered without change as Section R18-4-236 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-237. Repealed

Historical Note

Adopted effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-238. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-239. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-240. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-241. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-242. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-243. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-244. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-245. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-246. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-247. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-248. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-249. Repealed

Historical Note

Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-250. Repealed

Historical Note

Former Section R9-8-250 repealed, new Section R9-8-250 adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-250 renumbered without change as Section R18-4-250 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-251. Repealed

Historical Note

Former Section R9-8-250 repealed, new Section R9-8-251 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended by adding subsection (B) effective November 2, 1982 (Supp. 82-6). Former Section R9-8-251 renumbered without change as Section R18-4-251 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-252. Repealed

Historical Note

Former Section R9-8-252 repealed, new Section R9-8-252 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (A) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-252 renumbered without change as Section R18-4-252 (Supp. 87-3). Amended by adding a new subsection (C) effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

R18-4-253. Repealed

Historical Note

Former Section R9-8-253 repealed, new Section R9-8-253 adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended subsection (A) and deleted subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-253 renumbered without change as Section R18-4-253 (Supp. 87-3). Repealed effective August 8, 1991 (Supp. 91-3).

R18-4-254. Reserved

R18-4-255. Reserved

R18-4-256. Reserved

R18-4-257. Reserved

R18-4-258. Reserved

R18-4-259. Reserved

R18-4-260. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-260 renumbered without change as Section R18-4-260 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-261. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-261 renumbered without change as Section R18-4-261 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-262. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-262 renumbered without change as Section R18-4-262 (Supp. 87-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-263. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-263 renumbered without change as Section R18-4-263 (Supp. 87-3). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-264. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended subsection (B) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-264 renumbered without change as Section R18-4-264 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-265. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-265 renumbered without change as Section R18-4-265 (Supp. 87-3). Amended subsections (B) and (C) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-266. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-266 renumbered without change as Section R18-4-266 (Supp. 87-3). Amended subsection (A) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-267. Repealed

Historical Note

Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-267 renumbered without change as Section R18-4-267 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-268. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-268 renumbered without change as Section R18-4-268 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-269. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-269 renumbered without change as Section R18-4-269 (Supp. 87-3). Amended subsection (A) effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-270. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-270 renumbered without change as Section R18-4-270 (Supp. 87-3). Repealed effective June 30, 1989 (Supp. 89-2). New Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-271. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-271 renumbered without change as Section R18-4-271 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-272. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended subsections (A) and (D) effective January 6, 1984 (Supp. 84-1). Former Section R9-8-272 renumbered without change as Section R18-4-272 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-273. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Amended effective August 7, 1979 (Supp. 79-4). Amended effective January 6, 1984 (Supp. 84-1). Former Section R9-8-273 renumbered without change as Section R18-4-273 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-274. Reserved

R18-4-275. Reserved

R18-4-276. Reserved

R18-4-277. Reserved

R18-4-278. Reserved

R18-4-279. Reserved

R18-4-280. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-281. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-282. Repealed

Historical Note
Adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

R18-4-283. Reserved

R18-4-284. Reserved

R18-4-285. Reserved

R18-4-286. Reserved

R18-4-287. Reserved

R18-4-288. Reserved

R18-4-289. Reserved

R18-4-290. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Former Section R9-8-290 renumbered without change as Section R18-4-290 (Supp. 87-3). Amended effective June 30, 1989 (Supp. 89-2). Section repealed, new Section adopted effective August 8, 1991 (Supp. 91-3). Repealed effective April 28, 1995 (Supp. 95-2).

Appendix 1. Repealed

Historical Note
Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 2. Repealed

Historical Note
Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 3. Repealed

Historical Note
Amended effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 4. Repealed

Historical Note
Former Appendix 4 repealed, new Appendix 4 adopted effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 5. Repealed

Historical Note

Former Appendix 5 renumbered as Appendix 6, new Appendix 5 adopted effective November 2, 1982 (Supp. 82-6). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 6. Repealed

Historical Note

Former Appendix 5 renumbered as Appendix 6 effective November 2, 1982 (Supp. 82-6). Former Appendix 6 repealed, new Appendix 6 adopted effective January 6, 1984 (Supp. 84-1). Amended effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

Appendix 7. Repealed

Historical Note

Adopted effective June 30, 1989 (Supp. 89-2). Repealed effective August 8, 1991 (Supp. 91-3).

ARTICLE 3. MONITORING ASSISTANCE PROGRAM

R18-4-301. Applicability

A. A public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days after receiving notice of participation in the monitoring assistance program from the Department, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting to the Department the portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination.

B. A public water system that is not obligated to participate in the monitoring assistance program may elect to participate in the monitoring assistance program if the owner of the public water system:

1. Notifies the Department in writing of the public water system's intention to participate in the monitoring assistance program,
2. Agrees to participate in the monitoring assistance program for a minimum of three years, and
3. Pays the fees required by R18-4-304. Subject to payment of the required fees, the public water system's participation shall begin at the start of the next full calendar year of a compliance period.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-301 repealed; new Section renumbered from R18-4-224 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-301.01. Renumbered

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1686, effective April 19, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-301.01 renumbered to R18-4-212 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3)

Table 1. Renumbered

Historical Note

New Table made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Table 1 following R18-4-301.01 renumbered to R18-4-212, Table 1 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-301.02. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-301.02 and Tables 1 and 2 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-302. Contractor Responsibilities

A. Under the monitoring assistance program, a contractor is authorized to collect, transport, analyze, and report water samples on behalf of a participating public water system. The contractor or a party designated by the contractor shall conduct baseline monitoring for all chemicals for which the system is required to monitor under this Chapter, except for copper, lead, disinfection byproducts, and microbiological contaminants, which remain the responsibility of the public water system. Baseline monitoring includes routine monitoring for contaminants included in the monitoring assistance program. Baseline monitoring does not include increased monitoring required by this Chapter when the results of baseline monitoring indicate the presence of a contaminant at a level that requires increased monitoring by a participating public water system.

B. A contractor shall deliver copies of monitoring analysis results to the public water system and to the Department.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-302 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-303. Public Water System Responsibilities

A. Although a contractor performs baseline monitoring when a public water system participates in the monitoring assistance program, the public water system remains legally responsible for compliance with all other requirements of this Chapter.

B. The legal owner of a public water system participating in the monitoring assistance program shall notify the Department by July 1 of each year of:

1. The legal owner's name, current mailing address, and phone number;
2. The population currently served by the public water system;
3. The public water system identification number; and
4. The number of meters and service connections currently in the public water system.

C. A public water system that participates in the monitoring assistance program shall not deny a contractor access to or restrict a contractor's access to the public water system or prevent a contractor from collecting a sample covered under the monitoring assistance program.

D. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-303 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-304. Fees for the Monitoring Assistance Program

A. The Department shall assess, and a public water system participating in the monitoring assistance program shall pay, the following annual fees, subject to adjustments referenced in subsection (B):
1. An annual fee of $250, and
2. A unit fee of $2.57 per meter or service connection.

B. If the monitoring assistance fund has a surplus after execution of the previous year's contract, any surplus in excess of $200,000 in any year shall be used to reduce future fees for public water systems that paid annual fees in the previous compliance period, in a manner consistent with the program invoicing system. In the first compliance period that a public water system participates in the monitoring assistance program, the public water system shall pay the full amount of annual fees due under this Section, and is not entitled to a fee reduction resulting from a surplus in the monitoring assistance fund from a prior compliance period.

C. If a public water system serving 10,000 or fewer persons at the beginning of a compliance period increases service during the compliance period so that the public water system serves more than 10,000 persons annually, the public water system may elect to cease participation in the monitoring assistance program under the following conditions:
1. If the monitoring assistance program has already conducted monitoring for the public water system during the compliance period, the public water system shall remain in the monitoring assistance program, and pay annual fees, for the remainder of the compliance period.
2. If the monitoring assistance program has not conducted monitoring for the public water system during the compliance period, the public water system may cease participating in the monitoring assistance program, and if so, the Department shall refund any monitoring fees paid by the public water system during the compliance period.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-304 repealed; new Section renumbered from R18-4-225 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-305. Collection and Payment of Fees

A. The Department shall annually mail an invoice for fees to the legal owner of a public water system participating in the monitoring assistance program. The owner of the public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the due date indicated on the invoice.

B. The Department shall make refunds or billing corrections if a public water system demonstrates an error in the amount billed. The owner of a public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.

C. The Department may verify the number of meters and service connections of a participating public water system.

D. The Department shall not waive fees prescribed by R18-4-304.

E. The owner of a public water system that fails to pay fees assessed by the Department in a timely manner shall be subject to the penalties listed in A.R.S. § 49-354. Failure to notify the Department of the owner's current mailing address does not relieve the owner of a public water system from liability for penalties.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-305 renumbered to R18-4-306 by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). New Section R18-4-305 renumbered from R18-4-226 and amended by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-306. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Former Section R18-4-306 repealed; new Section R18-4-306 renumbered from R18-4-305 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-307. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-308. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-309. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-310. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-311. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-312. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-313. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-314. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-315. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-316. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-317. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Table 1. Repealed

Historical Note

Table 1 adopted by final rulemaking at 5 A.A.R. 1686, effective April 19, 1999 (Supp. 99-2). Table repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix A. Repealed

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix B. Repealed

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix B repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 4. OTHER SAFE DRINKING WATER ACT REGULATIONS

R18-4-401. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Former Section R18-4-401 repealed; new Section R18-4-401 renumbered from R18-4-402 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-402. Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B

40 CFR 143, Subpart B (40 CFR 143.10 through 143.20) revised as of July 1, 2021 and published by the Office of the Federal Register, National Archives and Records Administration is incorporated by reference. This rule does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the U.S. Government Publishing Office, bookstore.gpo.gov, P.O. Box. 979050, St. Louis, MO 63197-9000.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Former Section R18-4-402 renumbered to R18-4-401; new Section R18-4-402 renumbered from R18-4-403 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). New Section made by final expedited rulemaking at 29 A.A.R. 1472 (June 30, 2023), with an immediate effective date of June 7, 2023 (Supp. 23-2).

R18-4-403. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section repealed; new Section adopted effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 5067, effective October 16, 2001 (Supp. 01-4). Section R18-4-403 renumbered to R18-4-402 by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). New Section made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-404. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

R18-4-405. Repealed

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

ARTICLE 5. RECODIFIED

Article 5 recodified to 18 A.A.C. 5, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-501. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Section recodified to R18-5-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-502. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). A.R.S. citation in subsection (D)(4) corrected (Supp. 04-1). Section recodified to R18-5-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-503. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-504. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-505. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Subsection citation in subsection (B) corrected (Supp. 04-1). Section recodified to R18-5-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-506. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-506 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-507. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-507 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-508. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-4-509. Recodified

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section recodified to R18-5-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Appendix A. Repealed

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Correction of word "sued" to "used" in subsection (71) (Supp. 96-1). Appendix A amended effective June 3, 1998 (Supp. 98-3). Appendix A repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix B. Repealed

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Appendix B repealed; new Appendix B renumbered from Appendix C without change effective June 3, 1998 (Supp. 98-3). Appendix B repealed by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1).

Appendix C. Renumbered

Historical Note
Adopted effective April 28, 1995 (Supp. 95-2). Appendix C renumbered to Appendix B without change effective June 3, 1998 (Supp. 98-3).

ARTICLE 6. CAPACITY DEVELOPMENT REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

R18-4-601. Applicability

This Article applies to new CWSs and new NTNCWSs that begin operation on or after October 1, 1999. This Article does not apply to an existing public water system.

Historical Note
New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-602. Elementary Business Plan

A. To become a new public water system, an owner shall file an elementary business plan for review and approval by the Department, on a form provided by the Department. The elementary business plan shall meet the requirements of and contain all information required in R18-4-603, R18-4-604, and R18-4-605.

B. An owner shall not commence operation of a public water system without Department approval under R18-4-606.

C. If the owner of a new public water system fails to submit a complete application, the Department shall suspend the review process and send a notice of incomplete elementary business plan to the owner. The owner shall submit the missing information to the Department within 60 days of the date of the notice of incomplete elementary business plan. If missing information is not received at the Department within the 60 day time period, the Department shall deny the elementary business plan and return the elementary business plan to the owner.

Historical Note
New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4

(Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source adequacy minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles 2, 3, and 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and
5. Documentation that contains at least the following:
   a. Day 1 to final build-out technical and engineering needs projections;
   b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
   c. Information describing the life of the plant;
   d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory;
   e. Manufacturers' specifications on components used in the construction of the water system; and
   f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specification.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-604. Managerial Capacity Requirements

An owner of a new public water system shall submit the following information as part of the elementary business plan to the Department for a determination of managerial capacity:

1. A statement of how the public water system is owned, such as by major stockholders, board of directors, sole proprietor cooperative, governmental agency or district, corporation, limited partnership, or limited liability corporation;
2. Name, address, and phone number of owner;
3. Organizational chart of the new public water system;
4. Staff job descriptions and responsibilities;
5. Water system capital improvement plan up to the proposed full system build-out or for a five-year projection, whichever is greater;
6. Certified operator grade and type that will be required by the new public water system, based upon water system design specifications;
7. A statement of the intent to create a CWS or NTNCWS and any intent to transfer ownership of the public water system as part of the construction plan or project phase build-out;
8. Method to ensure provision of information listed in Appendix B, item 4 to subsequent owners; and
9. A disclosure statement signed by the owner setting forth the owner's responsibility to comply with the requirements of this Article and to disclose all information relevant to the operation of the public water system upon transfer of ownership as outlined in Appendix B.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-605. Financial Capacity Requirements

An owner of a new public water system shall submit information for a five-year financial capacity plan, or a financial capacity plan to the end of the build-out phase, whichever is longer, that demonstrates financial capacity and documents or contains all of the information listed in Appendices C and D.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-606. Review, Approval, Denial Process

A. The Department shall review and evaluate technical capacity, based upon the requirements in R18-4-603 and Appendix A.

B. The Department shall review and evaluate managerial capacity, based upon the requirements in R18-4-604 and Appendix A.

C. The Department shall accept a financial determination made by the Arizona Corporation Commission (ACC) as meeting the financial capacity requirements contained in this Article for a new CWS or new NTNCWS under the jurisdiction of the ACC. The applicant shall submit documentation to the Department that verifies ACC approval of the public water system's financial capacity.

D. The Department shall accept a financial determination as set forth in the certificate of assured water supply from the Arizona Department of Water Resources, Active Management Area Program (ADWR) as meeting the financial capacity requirements contained in this Article for a new CWS or new NTNCWS. The owner shall submit documentation to the Department that verifies ADWR approval of its financial capacity.

E. If a new public water system does not fall under financial review jurisdiction of the ACC or ADWR, the new CWS or new NTNCWS shall submit to the Department for review a completed financial capacity portion of the elementary business plan. The Department shall review and evaluate financial capacity, based upon the requirements in R18-4-605 and Appendices A, C, and D.

F. The Department shall notify an owner of a new public water system in writing of a deficiency in the elementary business plan or approve or deny the elementary business plan within 90 days of a receipt of a complete elementary business plan. The owner shall have 60 days from the date of a notice of defi-

ciency to submit to the Department the information necessary to correct the deficiency in the elementary business plan. If the owner of the new public water system fails to send the requested information so that it is received by the Department within 60 days of the date of the notice of deficiency, the Department shall deny the elementary business plan and return it to the owner with a written explanation for the denial and information on the appeal process.

G. If an owner modifies technical or managerial specifications at any time between the approval to construct and the approval of construction, the owner shall notify the Department of the need to modify the elementary business plan in the technical, managerial, and financial capacity documentation. The Department shall revoke approval of the elementary business plan if the owner fails to notify the Department within 30 days of a modification.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

R18-4-607. Appeals

An owner may appeal denial of an elementary business plan under A.R.S. § 41-1092 et seq.

Historical Note

New Section adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix A. Elementary Business Plan Checklist

Elementary Business Plan Checklist

Technical Capacity	Yes	No	N/A
1. Source Adequacy - Does the documentation demonstrate 50 gallons of water per person per day for 100 years or does the system have an Arizona Department of Water Resources Certificate of assured water supply?	_____	_____	_____
2. Source Adequacy - Does the source approval information demonstrate that the source meets drinking water quality standards or have applicable drinking water technologies been described?	_____	_____	_____
3. Infrastructure - Do the design criteria meet the requirements of R18-4-502 through R18-4-509?	_____	_____	_____
4. Treatment - Do the design criteria include treatment technologies approved by ADEQ in 18 A.A.C. 4, Articles 2, 3, and 5?	_____	_____	_____
5. Does the system have a certified operator of the appropriate grade and type?	_____	_____	_____
6. Does the documentation include an elementary business plan containing technical and engineering needs projections for a time period covering day 1 to final build-out or for a five-year time period, which ever is greater?	_____	_____	_____
7. Does the documentation include the proposed water system design specifications and proposed uses including commercial and domestic use phases?	_____	_____	_____
8. Does the documentation include an elementary business plan containing the information on the components used in the design and construction of the system along with the components life span based upon manufacturer's specifications?	_____	_____	_____
9. Does the documentation include an Operations and Maintenance Plan that contains standards that are nationally recognized on all site-specific components, such as American Water Works Association, National Sanitation Foundation, or Underwriter's Laboratory?	_____	_____	_____
10. Does the documentation include an operation and maintenance plan with the manufacturer's specifications on all components used in the construction of the water system?	_____	_____	_____
11. Does the documentation include an operations and maintenance plan and emergency operation plan to address site-specific component replacement or repair protocols based on manufacturer's recommendations or engineer's specifications?	_____	_____	_____
Managerial Capacity	Yes	No	N/A
12. Does the documentation include ownership type?	_____	_____	_____
Select all that apply.			
Sole Proprietor	_____	_____	_____
Major Stockholders	_____	_____	_____
Board of Directors	_____	_____	_____
Cooperative	_____	_____	_____
Government Agency or District	_____	_____	_____
Corporation	_____	_____	_____
Limited Liability Corporation	_____	_____	_____
Partnership	_____	_____	_____
Other_____	_____	_____	_____
13. Does the documentation include name, address, and telephone number of owner?	_____	_____	_____
14. Does the documentation include an organizational chart of owners, management, and staff with their position or job titles?	_____	_____	_____
15. Does the documentation include staff job descriptions and responsibilities?	_____	_____	_____
16. Does the documentation include a capital improvement plan up to the proposed full system build-out or for a five-year projection, whichever is greater?	_____	_____	_____
17. Does the documentation identify the grade and type of certified operator that will be needed to operate the system according to site-specific components?	_____	_____	_____
18. Does the documentation identify the intent to create a CWS or NTNCWS?	_____	_____	_____
19. Does the documentation transfer the ownership of the water system as part of the build-out phase of the project?	_____	_____	_____
20. Does the documentation identify the policies or mechanisms to ensure that all system-specific technical, managerial, and financial information of the water system is transferred to a new owner?	_____	_____	_____
21. Does the documentation include the owner's signed disclosure statement agreeing to comply with the requirements of these Articles and a general disclosure statement agreeing to disclose all information relevant to the operation of the water system to any transferee of ownership? (See Appendix B).	_____	_____	_____

Financial Capacity	Yes	No	N/A
22. Is the system regulated by the Arizona Corporation Commission (ACC) or ADWR? If Yes go to Question 23. If No go to Question 25.	_____	_____	_____
23. Has the system received an approval from the ACC on its fee structure, or ADWR on its financial capacity?	_____	_____	_____
24. Systems regulated by the Arizona Corporation Commission or Department of Water Resources shall provide information required in 22 and 23 for the financial capacity determination review by ADEQ.	_____	_____	_____
25. For New CWSs and NTNCWS NOT regulated by ACC, is all information listed in Appendices C and D included?	_____	_____	_____

Historical Note

Appendix A adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix B. Drinking Water Capacity Development Statement of Responsibility

Drinking Water Capacity Development Statement of Responsibility

Applicant Information:

Name:

Mailing Address:

Phone Number: **Fax Number:** **E-mail:**

Statement Information:

1) Name of Water System:_____PWS ID#_____

2) Ownership Type (Please check all that apply):

____Sole Proprietor ___Major Stockholders ___Board of Directors
____Cooperative ___Government Agency ___District
____Public Entity ___Corporation ___Limited Liability Corporation
____Other (please explain) _____

3) Name of Owner(s): (Check one) See below Attach a separate sheet if more space is needed

Owner 1:

Owner 2:

Owner 3:

4) Agencies with rules applicable to the Water System: (Please check all that apply)

____Arizona Department of Environmental Quality
____Arizona Department of Water Resources
____Arizona Department of Commerce
____Arizona Department of Corrections
____Arizona Land Department
____Arizona Department of Transportation
____Pima County Department of Environmental Quality
____Arizona Corporation Commission
____Arizona Department of Real Estate
____Arizona Department of Agriculture
____Office of the Fire Marshal
____Arizona Department of Revenue
____Maricopa County Environmental Services
____Environmental Protection Agency Region IX
____Other(s) please specify_____

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5) Statement of Intent (Select one):

____It **IS** the intent of the owner or developer of this NEW CWS or NEW NTNCWS to transfer ownership of the water system. As part of the ownership transfer, it is understood that the owner or developer has a responsibility to disclose and transfer ALL information relevant to the construction and operation of the water system to the new owner.
____It is **NOT** the intent of the owner to transfer ownership of the NEW CWS or NTNCWS within one year of the completion of construction of the water system.

6) Date owner expects to begin operation:

Month_____ Day _____ Year_____

7) Drinking Water Sources used: (Select all that apply)

____Ground Water ____Purchased Ground Water
____Surface Water ____Purchased Surface Water

8) Table of Contents of Systems Elementary Business Plan (Please check one):

____The Table of Contents of the Elementary Business Plan is attached.
____The Table of Contents of the Elementary Business Plan is summarized below.
Summary_____
_____
_____

9) Signature of each current owner: Check if additional signature page is attached.____

I agree to comply with the requirements of 18 A.A.C. 4, Article 6.

Print Name:_____Signature:_____Date:_____

Print Name:_____Signature:_____Date:_____

Print Name:_____Signature:_____Date:_____

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Historical Note

Appendix B adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix C. Financial Capacity for New CWSs and NTNCWSs, Worksheet 1

Financial Capacity for New CWSs and NTNCWSs
Worksheet 1

Owner:_____

Completed by:_____Date:_____

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
Enter Year:					
1. Beginning Cash on Hand					
a. Unmetered Water Revenue					
b. Metered Water Revenue					
c. Other Water Revenue					
d. Total Water Revenues (1a thru 1c)					
e. Connection Fees					
f. Interest and Dividend Income					
g. Other Income					
h. **Total Cash Revenues** (1d thru 1g)					
i. Additional Revenue Needed					
j. Loans, Grants or other Cash Injection (please specify)					
2. Total Cash Balance (1h to 1j)					
3. Total Cash Available (1+2)					
4. Operating Expenses					
a. Salaries and wages					
b. Employee Pensions and Benefits					
c. Utilities					
d. Chemicals					
e. Materials and Supplies					
f. Laboratory					
g. Contractual Services					

h. Insurance					
i. Miscellaneous					
j. **Total Operations and Maintenance Expenses (4a thru 4i)**					
k. Replacement Expenditures					
l. **Total Operations and Maintenance expenditures plus Replacement expenditures (4j+4k)**					
m. Loan Principal/Capital Lease Payments					
n. Loan Interest Payments					
o. Capital Purchases (specify):					
5. Total Cash Paid Out (4m thru 4o)					
6. Ending Cash Position (3 - 5)					
7. Number of Customer Accounts					
8. Average Annual User Charge per account (1d/7)					
9. Coverage Ratio (1h-4l)/(4m+4n)					
10. Operating Ratio (1d/4l)					
11. End of Year Operating Cash (6 - 12)					
12. End of Year Reserves					
a. Operating Reserves					
b. Debt Service Reserve					
c. Capital Improvement Reserve					
d. Replacement Reserve					
e. Other					
Total Reserves (12a thru 12e)					

Appendix C. (Continued) Financial Capacity for New CWSs and NTNCWSs, Definitions for Worksheet 1

Arizona Financial Capacity For New CWSs and NTNCWSs Definitions for Worksheet 1

5-Year Financial Projection	Year 1 Projection	Year 2 Projection	Year 3 Projection	Year 4 Projection	Year 5 Projection
1. Beginning Cash on Hand	For the current year budget, use the actual cash balance. For all other years, cash on hand should equal item #12 from the previous period.				
a) Unmetered Water Revenue	All cash received or estimated for water supplied to residential, commercial, industrial and public customers where the customer charge is not based on quantity, but is based on other criteria such as diameter of service pipe, room, or foot of frontage.				
b) Metered Water Revenue	All cash received or estimated for water supplied to residential, commercial, industrial, and public customers where the charge is based on quantity of water delivered.				
c) Other water revenues	Other cash received or estimated from sales of water, sales for irrigation, sales for resale, inter-municipal sales, or ad valorem taxes.				
d) Total Water Revenues	Total 1(a) thru 1(c)				
e) Connection Fee	All cash received or estimated for connection of customer service during the year.				
f) Interest and Dividend Income	All cash received or estimated on interest income from securities, loans, notes, and similar instruments, whether the securities are carried as investments or included in sinking or reserve accounts.				
g) Other income	Other revenues collected or estimated during the period (such as disconnection or change in service fees, profit on materials billed to customers, servicing of customer lines, late payment fees, rents, sales of assets, or ad valorem taxes (infrastructure portion).				
h) Total Cash Revenues	**Add 1(d) thru 1(g)**				
i) Additional Revenues Needed	Additional cash needed to cover cash needs.				
j) Loans, Grants or other Cash Injections	Includes loans or grants from financial institutions, inter-municipal loans, state or federal sources.				
2. Total Cash Balance	**Add items 1(h) thru 1(j)**				
3. Total Cash Available	**Add items 1 and 2**				
4. Operating Expenses	Use actual amounts paid when completing the prior year. Estimate the amounts for projected years based on prior year amounts, trends, and other known variables.				
a) Salaries and wages	Cash expenditures made or estimated for salaries, bonuses, and other considerations for work related to the operation and maintenance of the facility, including administration and compensation for officers and directors.				
b) Employee Pensions and Benefits	Paid vacations, paid sick leave, health insurance, unemployment insurance, pension plan, and other similar liabilities.				
c) Utilities	Amounts paid or estimated for all fuel or electrical power.				
d) Chemicals	Amounts paid or estimated for chemicals used in treatment and distribution.				
e) Materials and Supplies	Amounts paid or estimated for materials and supplies used for operation and maintenance of the new public water system other than those under contractual services.				

f) Laboratory	Amounts paid or estimated for laboratory and associated services.
g) Contractual Services	Amounts paid or estimated for outside engineering, accounting, legal, managerial, and other services.
h) Insurance	Amounts paid or estimated for vehicle, liability, worker's compensation, and other insurance associated with the public water system.
i) Miscellaneous	Amounts paid or estimated for all expenses not included elsewhere (such as permit fees, training, and certification fees).
j) Total operation and maintenance expenditures	**Add amounts in lines 4(a) thru 4(i).**
k) Replacement expenditures	Amounts paid or estimated for replacement of equipment to maintain system integrity (capital improvement plan).
l) Total Operations and Maintenance expenditures plus Replacement expenditures	**Add amounts in 4(j) and 4(k)**
m) Loan Principal, Capital Lease or Loan payment	Include cash payments made or estimated for principal and interest on all loans, including vehicle loans and equipment on time payments, and capital lease payments.
n) Loan Interest payments	Include cash payments made or estimated for interest on all loans, including vehicle loans, and equipment on time payments, and capital lease payments.
o) Capital Purchases	Amount of cash outlays or estimates for items such as equipment, building, or vehicle purchases and leasehold improvements that were not a part of the initial design of the water system.
5) Total Cash Paid Out	**Add amounts in 4(m) thru 4(o)**
6) Total Cash Available Minus Expenditures Calculation	**Take Amount in 1 and subtract Amount in 5.** If this amount is positive, there is operating cash left over after all calculated expenditure obligations have been met. If the number is negative, there are more expenses than there are funds available to pay for the expenses to operate the water system.
7) Number of Customer Accounts	Use most recent system data or expected increases.
8) Average User Charge per Customer	**Take amount listed in 1(d) and divide it by amount listed in 7.**
9) Coverage Ratio	**Take amount in 1(h) and subtract the amount in 4(l). Then divide that amount with the sum of 4(m) + 4(n).** The equation looks like this: **[1(h) - 4(l)]) [4(m) + 4(n)]** and measures the sufficiency of net operating profit to cover the debt service requirements of the system. A bond covenant might require the debt service to meet or exceed certain limits.
10) Operating Ratio	**Take amount in 1(d) and divide it by the amount in 4(l). The equation looks like this: 1(d)) 4(l).** This figure measures whether operating revenues are sufficient to cover operation, maintenance, replacement expenses. An operating ratio of 1:0 is the minimum for a self-supporting facility. If there are debt service requirements, the operating ratio would have to be higher.
11) End of Year Operating Cash	All non-reserved cash. **Add amounts from 6 thru 12.**
12) End of Year Reserves	Do not include depreciation as a reserve unless there is actually a designated depreciation reserve containing cash set aside for future expansion.

a) Operating Cash Reserve	Funds set aside to meet cash flow, operating, and seasonal fluctuations.
b) Debt Service Reserve	Funds specifically set aside to retire debt as it is scheduled.
c) Capital Improvement Reserve	Funds specifically set aside to meet long-term objectives for a major facility expansion, improvement, or the construction of a new facility.
d) Replacement Reserves	Funds specifically set aside for the future replacement of equipment needed to maintain the integrity of the facility over the useful life of the equipment.
e) Total End of Year Reserves	**Add amounts 12 (a) thru 12 (d).**

Historical Note

Appendix C adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4).

Appendix D. Water System Financial Viability Tests

Water System Financial Viability Tests

Test 1: Will the proposed water system collect sufficient revenues to meet all of its projected expenses?

Measurements:

a. Total Revenues - Total Expenses = Net Income > 0

b. Total Revenues - One-Time Revenues - Interest Income - Other Income = Operating Revenues

c. Total Expenses - One-Time Expenditures - Debt Service - Capital Outlays = Operating Expenditures

d. Operating Revenues - Operating Expenses = Net Revenues > 0

e. Operating Ratio = Operating Expenses ≤ 1 Operating Revenues

Test 2: Will the proposed water system generate reserves?

The following measurements shall be > 0 at the time submitted:

a. Operating Cash Reserve = $_____

b. Replacement Reserve = $_____

c. Working Capital = Current Assets - Current Liabilities

Test 3: Are the proposed rates reasonable compared to the median household income of the area to be served?

The following measurement shall be:

Average Annual Rates < Median Household Income* x 2.5%.

* The sources of median household income data include the most recent United States Census Bureau (USCB) data collected by the Department or generated by an impartial third party experienced in collecting income data and supplied to the Department by the applicant seeking viability determinations. Acceptable sources of income data, other than USCB data include feasibility studies, engineering reports, market studies, income surveys, or another source or collection methodology approved by the Department.

Historical Note

Appendix D adopted by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999; Test 1(e) amended to correct a manifest clerical error (Supp. 99-4).

ARTICLE 7. REPEALED

R18-4-701. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-701 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-702. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-702 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-703. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-703 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-704. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Clarifying words “of Article 1” added to subsection (A)(1) (Supp. 04-1). Section R18-4-703 and Table 1 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-705. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-705 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-706. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-706 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-707. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-707 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-708. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-708 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-709. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-709 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-710. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Section R18-4-710 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Repealed

Historical Note
New Appendix adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

Appendix B. Repealed

Historical Note
New Appendix adopted by final rulemaking at 6 A.A.R. 2019, effective May 10, 2000 (Supp. 00-2). Former Appendix B renumbered to Appendix C; new Appendix B made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix B repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

Appendix C. Repealed

Historical Note
New Appendix C renumbered from Appendix B by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix C repealed by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3).

ARTICLE 8. TECHNICAL ASSISTANCE

R18-4-801. Repealed

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4). Section R18-4-801 repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-802. Technical Assistance Plan
The Department shall include a technical assistance plan in the capacity development report it publishes annually. The technical assistance plan shall include a description of the types of technical assistance the Department expects to provide, the sources and uses of technical assistance, and a master priority list.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

R18-4-803. Master Priority List

A. Each year the Department shall develop a master priority list that ranks public water systems according to their need for technical assistance.

B. The Department shall rank public water systems on the master priority list based on consideration of the following criteria:
1. Size of population served,
2. Type of public water system,
3. Type of ownership,
4. Water source (surface water or ground water),
5. Participation in the monitoring assistance program,
6. History of major monitoring or reporting deficiencies,
7. History of acute or non-acute MCL violations,
8. History of operation or maintenance violations,
9. Lack of a certified operator,
10. Prior assistance from the Department or the Water Infrastructure Finance Authority within the last five years, and
11. Any or other measurable objective criteria related to the technical, managerial, or financial capacity of a public water system.

C. If all other criteria are equal, the Department shall assign priority to public water systems with the most operation or maintenance violations.

D. The Department shall publish the master priority list annually in the Arizona Administrative Register and hold an oral proceeding to obtain public comment on the master priority list.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

R18-4-804. Technical Assistance Awards

A. The Department shall award technical assistance to the public water systems with the highest ranking on the master priority list, as funding permits.

B. The Department may provide technical assistance directly, or the Department may employ a consultant to provide the assistance.

C. If a public water system refuses technical assistance offered by the Department, or the Department determines that a public water system is not able to proceed with technical assistance within the next fiscal year, the Department shall bypass the public water system on the master priority list. The Department shall replace a bypassed public water system with the public water system next in line to receive technical assistance in accordance with the priority criteria in R18-4-803(B).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 262, effective December 27, 2001 (Supp. 01-4).

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 regulating 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 not 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. Use 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 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 shall establish by rule a fee as a condition of licensure, including a maximum fee. 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, articles 8 and 9 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 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.

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 the fees.

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.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, 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. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer

registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.

2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.

3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.

2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.

2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.

3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.

4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.

5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

D-8.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 5

Amend: **R18-5-116, R18-5-208, R18-5-408**

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 5

Amend: R18-5-116, R18-5-208, R18-5-408

Summary:

This expedited rulemaking from the Arizona Department of Environmental Quality (Department) seeks to amend three (3) rules in Title 18, Chapter 5. The subject matter for Chapter 5 is Environmental reviews and certification. The Department is proposing the following amendments:

- R18-5-116; The Department is proposing to remove redundant references to statutes and other Department regulations regarding initial grading and regrading of facilities.
- R18-5-208; The Department is proposing to correct a misnumbered citation.
- R18-5-408; The Department is proposing multiple changes to this rule.
    - The first change is to replace the term "individual sewage disposal systems" to "on-site wastewater treatment facilities". Both terms mean the same thing and the latter term is the term used in other Department regulations so the change is to reduce confusion by using two terms that have the same meaning.
    - The second change is to remove outdated references to a bulletin and to add update references found in a separate chapter.

- The third change is to add a reference to a separate chapter to clarify who can submit a geological report. This change does not change the requirements only specifies where the already existing requirements can be found.
- The Department also proposes adding references to guidelines for percolation testing and the number of percolation tests required because while 408 currently references percolation testing it does not mention where the actual rule is found.
- The final proposal by the Department is to include references to the total nitrogen discharge requirements found in Chapter 9.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this portion of the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons; but amends rules that are outdated, and clarifies language of rules without changing their effects.

Council staff believe the current rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3) and (6).

For R18-5-116, the Department is removing a redundant reference to statute and other Department rule, satisfying the requirement of §41-1027(A)(6).

In R18-5-208 the Department will amend a reference to another Department rule because the rule contains a typographical error satisfying the requirements in §41-1027(A)(3).

For R18-5-408, the Department is proposing five amendments. For four of these amendments, the Department will be clarifying language that is already present in the rule by adding references to other Department rules that expand on those specific areas. These changes satisfy the requirements of §41-1027(A)(3). The final amendment is removing an outdated reference which satisfies the requirements of §41-1027(A)(6).

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates no changes were made between the proposed and final rulemaking.

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

The Safe Drinking Water Act, 42 U.S.C. §300f et seq., is applicable to these rules. However, the Department has indicated that the proposed rules are not more stringent than this corresponding federal law.

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

Not applicable. The Department has indicated that no permit or license is required or issued as part of these rules.

7. 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 any study relevant to this rulemaking.

8. Conclusion

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend three rules in Title 18, Chapter 5 for the purpose of fulfilling objectives from a previous 5 YRR and to correct terminology and references to statutes and other rules. The proposed amendments do not implement any substantive changes and make the rules more user friendly by adding references to other Department rules.

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

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

December 11, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 4, 5, 9, and 11 – "Water Quality Rule Corrections"

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for February 4, 2025.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)
   A. The public record closed for all rules on October 7, 2024 at midnight.
   B. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemakings, additionally, fulfill the requirements under A.R.S. § 41-1027(A)(3), "correct[ing] typographical errors…or clarifies language of a rule without changing its effect"; (A)(4), "adopt[ing] or incorporat[ing] by reference without material change federal statutes or regulations; (A)(6), "amend[ing] or repeal[ing] rules that are outdated, redundant or otherwise no longer necessary for the operation of state government"; and (A)(7), "implement[ing], without material change, a course of action that is proposed in a five-year review report approved by the council".
   C. The rulemaking activities relate to the following five-year review reports:
      1. 18 A.A.C. 4, Art. 1, 2, 3, 6, & 8 (submitted February 28, 2022, approved October 4, 2022);
      2. 18 A.A.C. Ch. 5, Art. 1, 2, 3, 4, & 5 (submitted August 27, 2021, approved November 2, 2021);

3. 18 A.A.C. Ch. 9, Art. 2 (submitted January 20, 2021, approved April 6, 2021), Art. 9 (submitted April 26, 2022, approved August 2, 2022) ;

D. 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.

E. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:

1. This cover letter.
2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 4, 5, Chapter 9, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. ADEQ did not receive any written comments on the NPERMs for Chapters 4, 5, 9, or 11.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
    a. Chapter 4:
        i. Authorizing statutes (general): A.R.S. §§ 49-104(B)(4), 49-353(A)(2)
        ii. Implementing statutes (specific): A.R.S. § 49-353.01
    b. Chapter 5:
        i. Authorizing statutes (general): A.R.S. § 49-104(B)(11)-(13)
        ii. Implementing statutes (specific): A.R.S. §§ 49-352, 49-353(A)(2), 49-353.01(A)(1), and 49-361
    c. Chapter 9:
        i. Authorizing statutes (general): A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), and 49-255.02
    d. Chapter 11:
        i. Authorizing statutes (general): A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

II. Additional items required by GRRC:

A. Exemption Memo Request.

B. Governor's Office initial written approval.
C. Governor's Office final written approval.

Thank you for your timely review and approval. Please contact Trevor Baggiore, Division Director, Water Quality Division, 602-771-2321 or baggiore.trevor@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY CHAPTER #. HEADING

CHAPTER 5. ENVIRONMENTAL REVIEWS AND CERTIFICATION

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024.

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-5-116	Amend
R18-5-208	Amend
R18-5-408	Amend

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

Authorizing statute: A.R.S. §§ 49-104(B)(11)-(13)

Implementing statute: A.R.S. § 49-352, 49-353(A)(2), 49-353.01(A)(1), 49-361

4. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State.

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-105.

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2792, Issue Date: September 6, 2024, Issue Number: 36, File number: R24-166.

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

Name: Tiffany Tom

Title: Attorney

Division: Office of Administrative Counsel

Address: Arizona Department of Environmental Quality
Office of Administrative Counsel
1110 W. Washington Street
Phoenix, AZ 85007

Telephone: (520) 625-6355

Email: waterqualityrulecorrections@azdeq.gov

Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

Summary:

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 5; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 5, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules in Title 18, Chapter 5, Articles 1, 2, and 4. The purpose of Chapter 5, Articles 1, 2, and 4, respectively, is to establish requirements for facility operators under water quality programs, regulate the design and construction of public and semipublic pools and spas, as well as set requirements for subdivision development relative to water quality programs. Expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1), 41-1027(A)(3), and 41-1027(A)(6) as explained below.

Section by Section Explanation of Proposed Rules:

R18-5-116: Initial Grading and Regrading of Facilities

This rule contains references to A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 regarding appeal rights concerning ADEQ initially grading or regrading a facility. Appeal rights are embedded in the program and, consequently, the references are redundant. In addition, almost all of the rules in 18 A.A.C. 1, Article 2 have either expired or been repealed, with the exception of R18-1-205, an inapplicable rule related to license applications. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1) and A.R.S. § 41-1027(A)(6), ADEQ proposes to remove these references.

R18-5-208(C): Maximum Bathing Load

This rule contains an incorrect citation to R18-5-242, concerning semipublic pools. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the incorrect citation from R18-5-242, concerning semipublic pools, to R18-5-241, concerning public pools.

18 A.A.C. 5, Article 4 provides the requirements for obtaining approval for the design, installation, and operation of on-site wastewater treatment facilities on subdivision plats. In addition, 18 A.A.C. 9, Articles 1 and 3 prescribe the requirements for permitting on-site wastewater treatment facilities under the Aquifer Protection Permit program. Currently 18 A.A.C. 5, Article 4 does not contain any reference to 18 A.A.C. 9, concerning requirements for on-site wastewater treatment facilities on subdivision plats. Therefore, ADEQ proposes updating and clarifying the rule to ensure it is congruous with the relevant on-site wastewater treatment facility requirements in Chapter 9.

R18-5-408: Requirements for the Approval of Subdivisions that Use On-site Wastewater Treatment Facilities

The rule's section heading as well as references in subsections (A), (B), (C), and (E) utilize the term "individual sewage disposal systems." "Individual sewage disposal systems" is not defined in the A.A.C. and is not a definition that is utilized in Chapter 9 to refer to these types of facilities. The correct term utilized in Chapter 9 is "on-site wastewater treatment facilities." This term is a synonym of "individual sewage disposal systems" and is, in fact, defined and utilized in Chapter 9. Therefore, the term "individ-

ual sewage disposal systems" is incorrect, and confusing to the general public.

ADEQ proposes replacing the term "individual sewage disposal systems" with "on-site wastewater treatment facilities" in the rule. This amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the heading and R18-5-408(A), (B), (C), and (E) to change "individual sewage disposal systems" to "on-site wastewater treatment facilities."

Next, subsection (A) references guidance found in engineering bulletins for on-site wastewater treatment facilities. The applicable engineering bulletin is Engineering Bulletin #12 titled, "Minimum Requirements for the Design and Installation of Septic Tank Systems and Alternative On-site Disposal Systems," published in June 1989. Engineering Bulletin #12 is no longer used and has been replaced with the current rules found in A.A.C. Title 18, Chapter 9, Articles 1 and 3, which were adopted in 2001. In addition, subsection (A) states that there may be additional requirements provided by local health departments to assist in approval of on-site wastewater treatment facilities. Removing a reference to engineering bulletins from this subsection will not impact the availability of these bulletins to the public as a resource. In addition, removing from this subsection a reference to local health departments that may exist will not impact any applicable local health department requirements. Therefore, pursuant to A.R.S. § 41-1027(A)(6), ADEQ proposes to remove language in subsection (A) that references engineering bulletins and local health department requirements that may be required and replace the language with a reference to the applicable rules at 18 A.A.C. 9, Articles 1 and 3.

Next, subsection (E)(1) describes the qualifications of a person submitting a geological report containing the percolation tests and boring logs, which includes an engineer, geologist or other qualified person. R18-9-A310, which covers the method for percolation tests for subsurface characterization, describes in R18-9-A310(H) the qualifications for a person performing a percolation test. R18-5-408(E)(1) uses the term "geological report," while R18-9-A310(H) uses the term "site investigation," but the terms are synonyms. While the requirements of R18-9-A310(H) apply to this rule currently, including a reference to the applicable Chapter 9 rule in this rule would clarify the language in subsection (E)(1). The proposed amendment provides clarity to R18-5-408(E)(1) as to who can perform and submit a report, without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(H).

Next, subsection (E)(1) sets forth requirements for conducting percolation testing for subdivision plats, but it does not reference the applicable rules guiding percolation testing methods for on-site wastewater treatment facilities. These requirements are found in R18-9-A310(F)(1), which describes percolation test methods for subsurface characterization of on-site wastewater treatment facilities. While the requirements of R18-9-A310(F)(1) apply to the rule currently, a reference to the percolation test methods for subsurface characterization in Chapter 9 would clarify the language in the rule, and make subsection (E)(1) more user-friendly.

ADEQ proposes referencing the requirements of R18-9-A310(F)(1), with the exception of the requirement in R18-9-A310(F)(1)(a) because R18-5-408(E)(1) already delineates the number of percolation tests required to be performed for a subdivision. The proposed amendment to R18-5-408(E) clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(F)(1), with the exception of the requirements of R18-9-A310(F)(1)(a).

Finally, ADEQ proposes to insert a reference to the total nitrogen discharge requirements found in R18-9-A309(8)(c) for subdivisions, which are required to be included in the geological report in R18-5-408(E)(1). The proposed amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A309(8)(c).

8. 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.

9. 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.

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Agency did not receive any public comments on A.A.C. Title 18 Chapter 5.

13. 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:

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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 Safe Drinking Water Act, as amended, is applicable to the subject of this rule. *See* 42 U.S.C. § 300f et seq. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis 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 under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable.

15. 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) state where the text was changed between the emergency and the final expedited rulemaking package:

The rules were not previously made as an emergency rule.

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY – ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Section

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

Section

ARTICLE 4. SUBDIVISIONS

Section

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-116. Initial Grading and Regrading of Facilities

~~**A.** The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when re-grading a facility.~~

~~**B.**~~ **A.** If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:

1. The facility has special design features or characteristics that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety or welfare.

~~**C.**~~ **B.** The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-208. Maximum Bathing Load

A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.

B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:

1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.

C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in ~~R18-5-242~~ R18-5-241.

D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.

E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

ARTICLE 4. SUBDIVISIONS

R18-5-408. ~~Individual sewage disposal systems~~ On-Site Wastewater Treatment Facilities

A. ~~Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.~~ On-site wastewater treatment facilities shall be governed by A.A.C. Title 18, Chapter 9, Articles 1 and 3.

B. Where soil conditions and terrain features or other conditions are such that ~~individual sewage disposal systems~~ on-site wastewater treatment facilities cannot be expected to function satisfactorily or where groundwater or soil conditions are such that ~~individual sewage disposal systems~~ on-site wastewater treatment facilities may cause pollution of groundwater, they are prohibited.

C. Where such installations may create an unsanitary condition or public health nuisance, ~~individual sewage disposal systems~~ on-site wastewater treatment facilities are prohibited.

D. The use of cesspools is prohibited

E. Where an ~~individual sewage disposal system~~ on-site wastewater treatment facility is proposed, the following conditions shall be satisfied:

1. A geological report shall be made by an engineer, geologist or other ~~qualified~~ person who meets the qualifications in R18-9-A310(H). The geological report shall include the total nitrogen discharge requirements of R18-9-A309(8)(c). The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that ~~individual disposal systems~~ on-site wastewater treatment facilities could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. Percolation tests shall be performed in accordance with all of the requirements in R18-9-A310(F), except for the requirements in R18-9-A310(F)(1)(a). The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of ~~individual sewage disposal systems~~ on-site wastewater treatment facilities.
3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

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 regulating 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 not 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. Use 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 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 shall establish by rule a fee as a condition of licensure, including a maximum fee. 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, articles 8 and 9 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 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.

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 the fees.

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.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, 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. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer

registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.

2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.

3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.

2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.

2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.

3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.

4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.

5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

49-361. Sewage treatment plants; operator certification

The department shall adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, and the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The rules apply to all sewage treatment plants that receive and treat wastes from common collection sewers and industrial plants but do not apply to septic tanks, to devices that serve a single home or to industrial treatment devices that are used to perform or allow recycling or impounding wastes within the boundaries of the industry's property.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Article 1, consisting of Sections R18-5-101 through R18-5-115, recodified from R18-4-101 through R18-4-115 (Supp. 95-2).

Article 5 renumbered as Article 1 consisting of Sections R18-4-101 through R18-4-115, effective October 23, 1987.

Former Sections R9-20-504 through R9-20-512, R9-20-517, R9-20-519, and R9-20-520 amended and renumbered as Article 5 consisting of Sections R9-20-501, R9-20-503 through R9-20-510, R9-20-512, R9-20-514, and R9-20-515; and new Sections R9-20-502, R9-20-511, and R9-20-513 adopted effective October 23, 1987.

Former Sections R9-20-501 through R9-20-503, R9-20-513 through R9-20-516, and R9-20-518 repealed effective October 23, 1987.

Section

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

Article 2, consisting of Sections R18-5-201 through R18-5-251 and Illustrations A and B, adopted effective February 19, 1998 (Supp. 98-1).

Section

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

Article 3, consisting of Sections R18-5-301 through R18-5-303, adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

Section

ARTICLE 4. SUBDIVISIONS

Former Title 9, Chapter 8, Article 11, consisting of Sections R9-8-1011 through R9-8-1015, R9-8-1021, R9-8-1026, R9-8-1027, R9-8-1031, and R9-8-1032 through R9-8-1036 renumbered as Title 18, Chapter 5, Article 4, consisting of Sections R18-5-401 through R18-5-411 (Supp. 89-2).

Section

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-101. Definitions

The terms in this Article have the following meanings:

"Certified operator" or "operator" means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection.

"Collection system" means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

"Department" means the Department of Environmental Quality or its designated representative.

"Director" means the Director of the Department of Environmental Quality or the Director's designated representative.

"Direct responsible charge" means day-to-day decision making responsibility for a facility or a major portion of a facility.

"Distribution system" means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

"Facility" means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

"Industrial waste" means the liquid, gaseous, or solid waste produced at an industrial operation.

"Onsite operator" means an operator who visits a facility at least daily to ensure that the facility is operating properly.

"Onsite representative" means an individual located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

"Operator" has the same meaning as certified operator, as defined in this Section.

"PDH" means professional development hour, as defined in this Section.

"Population equivalent" means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

"Professional development hour" or "PDH" means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

"Public water system" has the same meaning prescribed in A.R.S. § 49-352.

"Qualifying discipline" means engineering, biology, chemistry, or a closely related technical or scientific discipline.

"Qualifying experience" means experience, skill, or knowledge obtained through employment that is applicable to the technical or operational control of all or part of a facility.

"Remote operator" means an operator who is not an onsite operator.

"Validated examination" means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

"Wastewater" means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

"Wastewater treatment plant" means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-5-101 recodified from R18-4-101 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-102. Applicability

A. The rules in this Article apply to owners and operators of facilities in Arizona.

B. The following facilities are exempt from the requirements of this Article:

1. A public water system that meets the nonapplicability criteria in R18-4-102.
2. A septic tank or collection system that discharges to a septic tank.
3. A collection system that serves 2,500 or fewer persons and discharges into a facility that is operated by a certified operator.

4. A collection system that serves a nonresident population and discharges into a collection system operated by a certified operator.
5. An irrigation system, an industrial water facility, or a similar facility in which water is not used for domestic or drinking purposes.
6. An irrigation or industrial wastewater facility used to treat, recycle, or impound industrial or agricultural wastes within the boundaries of the industrial or agricultural property.
7. An industrial waste pretreatment facility in which treated wastewater is released to a collection system or wastewater treatment plant that is regulated by this Article.
8. A facility for treating industrial wastes that are not treatable by biological means.
9. A facility used to impound surface water before the water is conducted to a water treatment plant.
10. A wastewater treatment device that serves a home.

Historical Note
Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-5-102 recodified from R18-4-102 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-103. Certification Committee

A. Upon the effective date of this rule, the Director shall establish a certification committee to make recommendations and to provide the Department with technical advice and assistance related to this Article when requested.

B. The certification committee shall consist of 11 members as follows:
1. One employee of the Department;
2. One currently employed wastewater treatment plant operator with Grade 4 certification;
3. One currently employed water treatment plant operator with Grade 4 certification;
4. One currently employed wastewater collection system operator with Grade 4 certification;
5. One currently employed water distribution system operator with Grade 4 certification;
6. One faculty member teaching sanitary sciences at an Arizona university or community college;
7. One professional engineer, registered and residing in Arizona, engaged in consulting in the field of sanitary engineering;
8. One elected or appointed municipal official;
9. One representative of an investor-owned water or wastewater facility;
10. One representative of a small public water system; and
11. One currently employed remote operator representative.

C. The Director shall appoint each certification committee member.

D. The certification committee shall meet at least twice a year. At the first meeting of each calendar year, the certification committee shall select, from its membership, a chairperson and other officers as necessary. The Department's certification committee member is the executive secretary, who is responsible for keeping records of all meetings.

E. The term of a certification committee member is three years.

F. A meeting quorum consists of the chairperson or the chairperson's designated representative, the executive secretary or the executive secretary's designated representative, and three other members of the committee.

G. In the event of a vacancy caused by death, resignation, or removal for cause, the Director shall appoint a successor for the unexpired term.

H. A certification committee member may be reappointed, but a member shall not serve more than three consecutive terms.

Historical Note
Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-5-103 recodified from R18-4-103 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-104. General Requirements

A. A facility owner shall ensure that at all times:
1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility;
2. An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator may make a planning decision regarding water quality or water quantity if the decision is not a direct operational process control or system integrity decision that affects public health;
3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and at or above the grade of the facility;
5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
6. The names of all current operators are on file with the Department.

B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within 10 days of the replacement.

C. An operator shall notify the Department in writing within 10 days of the date the operator either ceases operation of a facility or commences operation of another facility.

D. An operator shall operate each facility in compliance with applicable state and federal law.

E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.

F. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
1. The remote operator is certified for the class of each facility and at or above the grade of each facility operated by the remote operator.
2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of subsection (F)(8) are met. The onsite representative is not required to be an operator if the

facility has a remote operator who is certified at or above the grade of the facility.

3. The remote operator instructs, supervises, and provides written instructions to the onsite representative in the proper operation and maintenance of each facility and ensures that adequate records are kept.
4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
6. The remote operator operates each facility in compliance with applicable state and federal laws.
7. The remote operator inspects a facility as often as necessary to ensure proper operation and maintenance, but in no case less than:
   a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
   b. Monthly for a Grade 1 wastewater treatment plant;
   c. Twice a month for a collection system that serves fewer than 2,500 people; and
   d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
   a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available;
   b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
   c. The remote operator inspects the facility weekly.

Historical Note

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-5-104 recodified from R18-4-104 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-105. Certification

A. The Department shall issue an operator certificate to an applicant if the applicant:
1. Meets the experience and education requirements in R18-5-112 for the applicable class and grade,
2. Passes a written examination for the applicable class and grade, and
3. Has not had an operator's certificate revoked in Arizona or permanently revoked in another jurisdiction.

B. To apply for operator certification, an applicant shall submit or arrange to have submitted to the Department the following information, as applicable, in a format acceptable to the Department:
1. The applicant's full name, Social Security number, and operator number;
2. The applicant's current mailing address, home and work telephone numbers, fax number, and e-mail address;
3. The applicant's place of employment, including the facility identification number;
4. The class and grade of the facility where the applicant is employed;
5. Proof of successful completion of the examination for the applicable class and grade; and
6. Documentation of the applicant's experience and education required under R18-5-112.

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-5-105 recodified from R18-4-105 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-106. Examinations

A. The Department shall provide for examinations for certification of operators. The Department may contract with third party examiners for administration of examinations, based on its assessment of the quality of the examination services. The Department shall ensure that a list of approved examiners is available upon request.

B. The Department shall validate all examinations before administration. Each examination shall include topics such as treatment technologies, system maintenance, regulatory protocols, safety, mathematics, and general system management.

C. The examiner shall grade the examination and make the results available to the applicant and the Department within seven days of the date of the examination.

D. An applicant shall not be admitted to an examination without a valid picture I.D.

E. An individual shall make a score of 70 percent on the examination in order to attain a passing grade.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-5-106 recodified from R18-4-106 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-107. Certificate Renewal

A. If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.

B. To renew a certificate, an operator shall complete and submit to the Department an operator certificate renewal form

approved by the Department. An operator shall maintain documentation and provide the documentation to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the operator may apply required PDHs to all certificates if the PDHs are acquired within the applicable certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.

C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-107 recodified from R18-4-107 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-108. Certificate Expiration

A. A certificate expires on the expiration date printed on the certificate. An operator may reinstate an expired certificate for the same class and grade without examination if the operator files the documentation required in R18-5-107(B) with the Department within 90 days of the certificate expiration date.

B. If an expired certificate is not renewed within 90 days of the certificate expiration date, the Department shall not reinstate the certificate. To be recertified, the operator shall reapply and be reexamined as a new applicant.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-5-108 recodified from R18-4-108 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-109. Denial, Suspension, Probation, and Revocation

A. If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.

B. The Department may revoke or suspend a certificate, or place an operator on probation, if the Department finds that the operator:

1. Operates a facility in a manner that violates federal or state law;
2. Negligently operates a facility or negligently supervises the operation of a facility;
3. Fails to comply with a Department order or order of a court;
4. Obtains, or attempts to obtain, a certificate by fraud, deceit, or misrepresentation;
5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
6. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or supervision of a facility;
7. Endangers the public health, safety, or welfare;
8. Fails to comply with the terms or conditions of probation or suspension; or
9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.

C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.

D. The Department may place an operator on probation or suspend an operator's certificate to address deficiencies in operator performance. The terms of probation or suspension may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other terms to address deficiencies in operator performance.

E. During the period of suspension, an individual whose certificate is suspended shall not operate a facility of the class of the suspended certificate.

F. An operator whose certificate is suspended or revoked, or who has been placed on probation, shall immediately notify the owner of a facility where the operator is employed of the suspension, revocation, or probation.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-5-109 recodified from R18-4-109 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-110. Reciprocity

The Department shall issue a certificate to an applicant who holds a valid certificate from another jurisdiction, if the applicant:

1. Passes a written, validated examination in Arizona or in another jurisdiction that administers an examination that is substantially equivalent to the examination in Arizona and validated by the Department, and
2. Submits written evidence of the experience and education required under R18-5-112.

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-110 recodified from R18-4-110 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-111. Repealed

Historical Note
Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-5-111 recodified from R18-4-111 (Supp. 95-2). Section repealed by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-112. Experience and Education

A. The Department shall consider the following criteria to determine whether an applicant has the experience and education required for certification in a specific class and grade:
1. Years of experience at a lower grade;
2. Qualifying experience in the same or a related field; and
3. Education in a qualifying discipline.

B. An applicant shall provide written evidence of education in a qualifying discipline. The applicant shall provide transcripts if the Department determines that the transcripts are necessary to verify completion of the education requirements.

C. An applicant shall provide written evidence of qualifying experience in the applicable facility class.

D. An applicant shall meet the following requirements for admission to a certification examination:
1. For Grade 1, high school graduation or the equivalent.
2. For Grade 2, at least:
   a. High school graduation or the equivalent and one year of qualifying experience as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction;
   b. Two years of postsecondary education in a qualifying discipline and one year of qualifying experience, including six months as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction; or
   c. A bachelor's degree in a qualifying discipline and six months of qualifying experience.
3. For Grade 3, at least:
   a. High school graduation or the equivalent and two years of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction;
   b. Two years of postsecondary education in a qualifying discipline, and 18 months of qualifying experience as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction; or
   c. A bachelor's degree in a qualifying discipline and one year of qualifying experience.
4. For Grade 4, at least:
   a. High school graduation or the equivalent and three years of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction;
   b. Two years of postsecondary education in a qualifying discipline and 30 months of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction; or
   c. A bachelor's degree in a qualifying discipline, and two years of qualifying experience.

Historical Note
Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-5-112 recodified from R18-4-112 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-113. Classes of Facilities

A. The Department shall classify a facility in one of four classes:
1. Water treatment plant,
2. Water distribution system,
3. Wastewater treatment plant, or
4. Wastewater collection system.

B. The Department shall classify a facility as one of four grades, Grades 1–4. The grade corresponds with the level of system complexity, with Grade 1 being the most simple and Grade 4 being the most complex.

C. For a multi-facility system, the Department shall grade each facility according to complexity and the total population or population equivalent served.

Historical Note
Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-5-113 recodified from R18-4-113 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems

The Department shall grade a wastewater treatment plant or collection system according to population equivalent served, degree of hazard to public health, class of facility, and degree of treatment, as follows:
1. Grade 1 includes:
   a. A stabilization pond that serves 2,000 or fewer persons;
   b. A wastewater treatment plant not designated as Grade 2, 3, or 4; or
   c. A collection system that serves 2,500 or fewer persons.
2. Grade 2 includes:
   a. A stabilization pond that is designed to serve more than 2,000 persons;
   b. An aerated lagoon;
   c. A facility that employs biological treatment based upon the activated sludge principle or trickling filters and is designed to serve 5,000 or fewer persons, except as provided in subsection (3)(c); or
   d. A collection system that serves between 2,501 to 10,000 persons.
3. Grade 3 includes:
   a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve 5,001 to 20,000 persons;
   b. A facility that employs trickling filtration and is designed to serve 5,001 to 25,000 persons;
   c. A variation of biological treatment based on the activated sludge principle that requires specialized knowledge, including contact stabilization, and is designed to serve 20,000 or fewer persons; or
   d. A collection system that serves 10,001 to 25,000 persons.
4. Grade 4 includes:

a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve more than 20,000 persons;
b. A facility that employs trickling filtration and is designed to serve a population equivalent more than 25,000 persons; or
c. A collection system that serves more than 25,000 persons.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-5-114 recodified from R18-4-114 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended to correct manifest typographical error in subsection (3)(d) (Supp. 01-3).

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system. The Department shall grade a water treatment plant according to the sum of the points it the Department assigns for each plant characteristic.

1. The Department shall assign points for the purpose of grading a water treatment plant as follows:

Plant Characteristics	**Points**
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Groundwater Source	3
Surface or Groundwater Under the Direct Influence of Surface Water Source	5
Carbon Dioxide	2
pH Adjustment	3
Packed Tower Aeration	6
Air Stripping	6
Stability or Corrosion Control	3
Taste and Odor	8
Iron/Manganese Removal	8
Ion Exchange Softening	10
Chemical Precipitation Softening	15
Coagulant Addition	6
Flocculation	4
Sedimentation	4
Upflow Clarification	2
Fluoridation	5
Activated Alumina	6
Blending	5
Residual Waste Stream	5
Control Systems Technology	2
Biologically Active Filter	20
Granular Media Filter	15
Pressure Filter	15
Gravity Sand Filter	10
Membrane Filtration	15
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9
Chlorine Dioxide	9
Ozone	12
Ultraviolet	3

2. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

Grade	**Point Range**
Grade 1	1 to 25
Grade 2	26 to 50
Grade 3	51 to 70
Grade 4	More than 70

B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points the Department assigns for each system characteristic.

1. The Department shall assign points for the purpose of grading a distribution system as follows:

System Characteristics	**Points**
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Pressure Zones	5
Booster Stations	5
Storage Tanks	3
Blending	5
Fire Protection Systems/Testable Backflow Prevention Assemblies*	5
Cathodic Protection	3
Control System Technologies	2
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9

Chlorine Dioxide	9

*The presence of one or both of these devices earns five points for the facility.

2. No points are added for Grade 1 small systems that:
   a. Only distribute groundwater;
   b. Serve fewer than 501 persons;
   c. Have no disinfection or disinfect by chlorine gas or hypochlorite only; and
   d. Do not store water or store water only in storage tanks.
3. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

Grade	Point Range
Grade 1	0
Grade 2	1 to 20
Grade 3	21 to 35
Grade 4	More than 35

Historical Note
Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-5-115 recodified from R18-4-115 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-116. Initial Grading and Regrading of Facilities

A. The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when regrading a facility.

B. If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:
1. The facility has special design features or characteristics that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety or welfare.

C. The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-201. Definitions

"Air induction system" means a system whereby a volume of air is induced into a hollow ducting in a spa floor, bench, or wall. An air induction system is activated by an air power blower and is separate from the water circulation system.

"Artificial lake" means a man-made lake, lagoon, or basin, lined or unlined, with a surface area equal to or greater than two acres (87,120 square feet), that is used or intended to be used for water contact recreation.

"Backwash" means the process of thoroughly cleaning a filter by the reverse flow of water through the filter.

"Barrier" means a fence, wall, building, or landscaping that obstructs access to a public or semipublic swimming pool or spa.

"Cartridge filter" means a depth, pleated, or surface-type filter component with fixed dimensions that is designed to remove suspended particles from water flowing through the filter.

"Construct" means to build or install a new public or semipublic swimming pool or spa or to enlarge, deepen, or make a major modification to an existing public or semipublic swimming pool or spa.

"Coping" means the cap on a swimming pool or spa wall that provides a finished edge around the swimming pool or spa.

"Cross-connection" means any physical connection or structural arrangement between a potable water system and the piping system for a public or semipublic swimming pool or spa through which it is possible to introduce used water, gas, or any other substance into the potable water system. A bypass arrangement, jumper connection, removable section, swivel or change-over device, or any other temporary or permanent device that may cause backflow is a cross-connection.

"Deck" means a hard surface area immediately adjacent or attached to a swimming pool or spa that is designed for sitting, standing, or walking.

"Deep area" means the portion of a public or semipublic swimming pool that is more than 5 feet in depth.

"Discharge piping" means the portion of the circulation system that carries water from the filter back to the swimming pool or spa.

"Diving area" means the area of a public or semipublic swimming pool that is designated for diving from a diving board, diving platform, or starting block.

"Fill-and-draw swimming pool or spa" means a swimming pool or spa where the principal means of cleaning is the complete removal of the used water and its replacement with potable water.

"Filtration rate" means the rate of water flowing through a filter during the filter cycle expressed in gallons per minute per square foot of effective filter area.

"Flow-through swimming pool or spa" means a swimming pool or spa where new water enters the swimming pool or spa to replace an equal quantity of water that constantly flows out.

"Freeboard" means the vertical wall section of a swimming pool or spa wall between the waterline and the deck.

"Hose bibb" means a faucet with a threaded nozzle to which a hose may be attached.

"Hydrotherapy jet" means a fitting that blends air and water and creates a high-velocity, turbulent stream of air-enriched water for injection into a spa.

"Make-up water" means fresh water used to fill or refill a swimming pool or spa.

"Maximum bathing load" means the design capacity or the maximum number of users that a public or semipublic swimming pool or spa is designed to hold.

"Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

"Operate" means to run, maintain, or otherwise control or direct the functioning of a public or semipublic swimming pool or spa.

"Overflow collection system" means equipment designed to remove water from a swimming pool or spa, including gutters, overflows, surface skimmers, and other surface water collection systems of various designs and manufacture.

"Potable water" means drinking water.

"Private residential spa" means a spa at a private residence used only by the owner, members of the owner's family, and invited guests, or a spa that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

"Private residential swimming pool" means a swimming pool at a private residence used only by the owner, members of the owner's family, and invited guests, or a swimming pool that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

"Public spa" means a spa that is open to the public with or without a fee, including a spa that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a spa.

"Public swimming pool" means a swimming pool that is open to the public with or without a fee, including a swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a swimming pool.

"Recessed treads" means a series of vertically spaced, preformed stepholes in a swimming pool wall.

"Return inlet" means an aperture or fitting through which filtered water returns to a swimming pool or spa.

"Rope and float line" means a continuous line not less than 3/4 inch in diameter that is supported by buoys and attached to opposite sides of a swimming pool to separate areas of the swimming pool.

"Semi-artificial bathing place" means a natural bathing place that has been modified by man.

"Semipublic spa" means a spa operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic spa includes a spa that is operated by a neighborhood or community association for the residents of the community and their guests and any spa at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a spa and where the use of the spa is included in the fee for the primary use of the establishment.

"Semipublic swimming pool" means a swimming pool operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic swimming pool includes a swimming pool that is operated by a neighborhood or community association for the residents of the community and their guests and a swimming pool at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a swimming pool and where the use of the swimming pool is included in the fee for the primary use of the establishment.

"Shallow area" means the portion of a public or semipublic swimming pool that is 5 feet or less in depth.

"Slip-resistant" means a surface that has a static coefficient of friction [wet or dry] of at least 0.50.

"Spa" means an artificial basin, chamber, or tank of irregular or geometric shell design that is intended only for bathing or soaking and that is not drained, cleaned, or refilled for each user. A spa may include features such as hydrotherapy jet circulation, hot water, cold water mineral baths, or an air induction system. Industry terminology for a spa includes "hydrotherapy pool," "whirlpool," "hot tub," and "therapy pool."

"Special use pool" means a swimming pool intended for competitive aquatic events, aquatic exercise, or lap swimming. A special use pool includes a wave action pool, exit pool for a water slide, swimming pool that is part of an attraction at a water recreation park, water volleyball pool, or a swimming pool with special features used for training and instruction.

"Suction outlet" means the aperture or fitting through which water is withdrawn from a swimming pool or spa.

"Suction piping" means the water circulation system piping that carries water from a swimming pool or spa to the filter.

"Swimming pool" means an artificial basin, chamber, or tank that is designed for swimming or diving.

"Turnover rate" means the number of hours required to circulate a volume of water equal to the capacity of the swimming pool or spa.

"User" means a person who uses a swimming pool, spa, or adjoining deck area.

"Wading pool" means a shallow swimming pool used for bathing and wading by small children.

"Water circulation system" means an arrangement of mechanical equipment connected to a swimming pool or spa by piping in a closed loop that directs water from the swimming pool or spa to the filtration and disinfection equipment and returns the water to the swimming pool or spa.

"Water circulation system components" means the mechanical components that are part of a water circulation system of a swimming pool or spa, including pumps, filters, valves, surface skimmers, ion generators, electrolytic chlorine generators, ozone process equipment, and chemical feeding equipment.

"Water level" means either:

a. On swimming pools and spas with skimmer systems, the midpoint of the operating range of the skimmers, or
b. On swimming pools and spas with overflow gutters, the height of the overflow rim of the gutter.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-202. Applicability

A. This Article applies to public and semipublic swimming pools and spas.

B. This Article does not apply to the following:
1. A private residential swimming pool or spa,
2. A swimming pool or spa used for medical treatment or physical therapy and supervised by licensed medical personnel,
3. A semi-artificial bathing place,
4. A natural bathing place, or
5. An artificial lake.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-203. Design Approval

A. A person shall obtain design approval from the Department before starting construction of:
1. A new public or semipublic swimming pool or spa;
2. A major modification to an existing public or semipublic swimming pool or spa. For purposes of this subsection, a major modification means a change to the shape, depth, water circulation system, or disinfection system of a public or semipublic swimming pool or spa or the installation of diving equipment at a public or semipublic swimming pool;
3. A change in use from a semipublic swimming pool to a public swimming pool; and
4. A change in use from a private residential swimming pool to a public or semipublic swimming pool.

B. An applicant for a design approval shall submit an ADEQ application form to the Department in quadruplicate with four complete sets of plans and specifications for the swimming pool or spa and the information in subsection (C).

C. The application for design approval shall include four copies of the following:
1. A general plot plan;
2. Plans and specifications showing the size, shape, cross-section, slope, and dimensions of each swimming pool or spa, deck areas, and barriers;
3. Plans and specifications showing the water circulation and disinfection systems, including all piping, fittings, drains, suction outlets, filters, pumps, surface skimmers, return inlets, chemical feeders, disinfection equipment, gauges, flow meters, and strainers;
4. Plans and specifications showing the source of water supply and the method of disposal of filter backwash water; used swimming pool or spa water, and wastewater from toilets, urinals, sinks, and showers;
5. Detailed plans of bathhouses, dressing rooms, equipment rooms, and other appurtenances; and
6. Additional data required by the Department for a complete understanding of the project.

D. A professional engineer, architect, or a swimming pool or spa contractor with a current A-9, A-19, KA-5, KA-6 license shall prepare or supervise the preparation of all plans and specifications submitted to the Department for review.

E. An applicant shall submit an application for design approval to the Department at least 60 days prior to the date that the applicant wishes to begin construction of a swimming pool or spa.

F. The Department shall determine whether the application for design approval is complete within 30 days of the date of receipt of the application by the Department.

G. The Department shall issue or deny the application for design approval within 30 days of the date that the Department determines that the application for design approval is complete.

H. Unless an extension of time is granted in writing by the Department, a design approval is void if construction is not started within one year after the date of its issuance or there is a halt in construction of more than one year.

I. The Department may issue a design approval with conditions. The Department shall not issue an Approval of Construction if the design approval is conditioned and the construction of the swimming pool or spa does not comply with the stated conditions.

J. The Department may issue design approvals in phases to allow a political subdivision to start construction of a public swimming pool or spa without issuing a design approval for the entire construction project. A design approval may be issued in phases provided all of the following conditions are met:
1. A phased design approval is needed to accommodate a design/build contract, phased construction contract, multiple construction contracts, turnkey contract, or special contract that requires construction to begin prior to the completion of design plans and specifications for the entire public swimming pool or spa construction project.
2. The applicant submits a detailed project description for the entire public swimming pool or spa construction project to the Department.
3. There is a written agreement between the applicant and the Department which includes the following:
   a. A construction project schedule,
   b. A schedule to submit applications and supporting documentation for the phased design approval including any anticipated variance requests,
   c. Negotiated time-frames for administrative completeness and substantive review of each application for phased design approval, and
   d. A schedule of construction inspections by the Department or third-party certifications by the applicant.
4. The applicant certifies in writing that the applicant understands that the public swimming pool or spa cannot be operated without an Approval of Construction for each phase of the construction project pursuant to R18-5-204.
5. If the applicant and the Department cannot reach agreement regarding a phased design approval or Approval of Construction, then the requirements of R18-5-203(A) through (I) and R18-5-204 apply.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-204. Approval of Construction

A. A public or semipublic swimming pool or spa shall not operate without receiving an Approval of Construction issued by the Department.

B. The construction of a public or semipublic swimming pool or spa shall conform to plans and specifications that have been approved by the Department. If the applicant wishes to make a change to the approved plans and specifications, the applicant shall submit revised plans and specifications with a written statement of the reasons for the change to the Department. The applicant shall obtain Department approval of the revised plans and specifications before starting any work affected by the change.

C. Prior to any construction that will cover the piping arrangement of the swimming pool or spa and at least 30 days prior to the expected date of completion of construction of a public swimming pool or spa, the applicant shall notify the Department to permit a construction inspection. The Department shall inspect the construction of a swimming pool or spa to determine if the swimming pool or spa has been constructed in

accordance with Department-approved plans, specifications, and conditions unless a professional engineer, architect, or registered sanitarian certifies that the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions.

D. If the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions, the Department shall issue the Approval of Construction within 30 days of the date of the construction inspection by the Department or the date the Department receives third-party certification.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-205. Prohibitions

A. A fill-and-draw swimming pool or spa shall not be used as a public or semipublic swimming pool or spa.

B. A private residential spa shall not be used as a public or semipublic spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-206. Water Source

Only water from a source that is approved by the Department shall be used in a public or semipublic swimming pool or spa. Reclaimed wastewater shall not be used as make-up water for a public or semipublic swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-207. Construction Materials

A. A public or semipublic swimming pool or spa shall be constructed of concrete or other structurally rigid material that is equivalent in strength or durability to concrete, except that a public or semipublic spa may be constructed of fiberglass or acrylic.

B. A public or semipublic swimming pool or spa shall be constructed of materials that are nontoxic.

C. A public or semipublic swimming pool or spa shall be constructed of waterproof materials that provide a watertight structure.

D. A public or semipublic swimming pool or spa shall have a smooth and easily cleaned surface, without cracks or joints, excluding structural joints, or to which a smooth, easily cleaned surface finish is applied or attached.

E. All corners in a public or semipublic swimming pool or spa shall be rounded, including the corners formed by the intersection of a wall and floor.

F. A surface within a public or semipublic swimming pool or spa intended to provide footing for users shall have a slip-resistant surface. The roughness or irregularity of the surface shall not cause injury or discomfort to users' feet during normal use.

G. The color, pattern, or finish of the interior of a public or semipublic swimming pool or spa shall not obscure objects, surfaces within the swimming pool or spa, debris, sediment, or algae. Surface finishes shall be white, pastel, or other light color. The interior finish shall completely line the swimming pool or spa to the coping, tile, or gutter system.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-208. Maximum Bathing Load

A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.

B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:

1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.

C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in R18-5-242.

D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.

E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-209. Shape

A. A public or semipublic swimming pool or spa may be any shape except that the designer shall shape a public or semipublic swimming pool or spa to minimize hazards to users and provide adequate circulation of swimming pool or spa water.

B. There shall be no protrusions, extensions, means of entanglement, or other obstructions in a public or semipublic swimming pool or spa that may cause entrapment of or injury to the user. This subsection does not prohibit water features such as water fountains, slides, water play equipment, or water volleyball and basketball nets.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-210. Walls

A. Where a racing lane terminates in a swimming pool, the wall shall be plumb to a minimum depth of 5 feet below the waterline. Below the 5-foot depth, the wall shall be radiused to join the floor.

B. There shall be no projections from a swimming pool or spa wall except for coping, cantilevered deck, ladders, and steps.

C. An underwater seat shall comply with the following:

1. The edges of an underwater seat shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the underwater seat;
2. An underwater seat shall have a slip-resistant surface;
3. An underwater seat shall be located outside of the deep area of a swimming pool that is equipped for diving. An underwater seat may be located in the deep area of a swimming pool that is not equipped for diving provided the underwater seat is either completely recessed into the swimming pool wall, shaped to be compatible with the shape of the swimming pool wall, or in a corner of the swimming pool;
4. The maximum depth of an underwater seat is 24 inches below the waterline. The minimum depth of an underwater seat is 12 inches below the waterline; and
5. The maximum width of an underwater seat is 20 inches.

D. If a spa is located immediately adjacent to a swimming pool, the separating wall between the spa and the swimming pool shall be no more than 8 inches wide. The top of the separating wall shall be no lower than the level of the coping of the swimming pool. If a separating wall is more than 8 inches wide, then the deck width shall comply with R18-5-217(D). A spa

shall not be located immediately adjacent to the deep area of a swimming pool.

E. Coping or cantilevered deck may project from a swimming pool or spa wall to provide a handhold for users. The coping or deck shall be rounded, have a slip-resistant surface finish, and shall not exceed 3 1/2 inches in thickness. The overhang of the coping or deck shall not exceed 2 inches or be less than 1 inch. All corners created by coping or cantilevered deck shall be rounded in both the vertical and horizontal dimensions to eliminate sharp corners.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-211. Freeboard

A. The freeboard in a public or semipublic swimming pool or spa shall not exceed 8 inches, except as provided in subsection (B).

B. The freeboard in a semipublic swimming pool may exceed 8 inches to provide for walls, terraces, or other design features. The Department shall review each request to allow an increase in freeboard on a case-by-case basis. In reviewing the request, the Department shall consider safety, exit distances, alternative exits, and location. The length and height of the section where the freeboard area may be increased is limited. All of the following requirements shall be met:

1. Guard rails or similar devices are provided to prevent any raised area from being used as a diving platform.
2. The vertical surfaces of the freeboard area are constructed of inorganic materials. All vertical surfaces shall be rigid, smooth, and easily cleanable.
3. The horizontal surface areas comply with the provisions of this Article for decks.
4. The vertical surface area is included as surface area of the swimming pool to determine the type, size, location, and numbers of equipment and piping.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-212. Floors

A. The slope of the floor of a public or semipublic swimming pool, from the end wall in the shallow area towards the deep area to the point of the first slope change shall be uniform and shall not exceed 1 foot of fall in 10 feet. The floor slope in a public or semipublic spa shall not exceed 1 foot of fall in 10 feet.

B. The floor slope of a public or semipublic swimming pool, from the point of the first slope change to the deepest part of the swimming pool, shall not exceed 1 foot of fall in 3 feet.

C. For a public or semipublic swimming pool that is equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 5 feet. For a public or semipublic swimming pool that is not equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 4 feet.

D. All portions of a swimming pool or spa floor shall slope towards a main drain.

E. The transitional radius where the floor of a public or semipublic swimming pool joins a wall shall comply with the following:

1. The center of the radius shall be no less than 3 feet below the waterline in the deep area or 2 feet below the waterline in the shallow area.
2. The radius shall be tangent at the point where the radius meets the wall or floor.
3. The radius shall be equal to or greater than the depth of the swimming pool minus the vertical wall depth measured from the waterline minus 3 inches.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-213. Entries and Exits

A. Each public or semipublic swimming pool shall have at least two means of entry or exit consisting of ladders, steps, or recessed treads.

B. There shall be at least one ladder, set of steps, or set of recessed treads for each 75 feet of perimeter of a public or semipublic swimming pool or spa.

C. At least one means of entry and exit shall be provided in the deep area and at least one means of entry and exit shall be provided in the shallow area of a public or semipublic swimming pool. Where the water depth is 2 feet at the swimming pool wall in the shallow area or where there is a zero depth entry pool [for example, an artificial beach], the area shall be considered a means of entry or exit.

D. A set of steps shall be provided in a public or semipublic spa.

E. The location of stairs, ladders, and recessed treads shall not interfere with racing lanes.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-214. Steps

A. Each set of steps shall be provided with at least one handrail to serve all treads and risers. Handrails shall be provided at one side or in the center of all steps. Handrails shall be installed in such a way that they can be removed only with tools.

B. Steps shall be permanently marked to be clearly visible from above and below the water level in a swimming pool or spa. The edges of steps shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the steps.

C. Steps may be constructed only in the shallow area of a public or semipublic swimming pool.

D. Steps shall not project into a public or semipublic swimming pool or spa in a manner that creates a hazard to users.

E. All tread surfaces on steps shall have slip-resistant surfaces.

F. Step treads shall have a minimum unobstructed horizontal depth of 10 inches. Risers shall have a maximum uniform height of 12 inches, with the bottom riser height allowed to vary ± 2 inches from the uniform riser height.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-215. Ladders

A. At least one ladder shall be provided in the deep area of a public or semipublic swimming pool. If the width of the deep area of a swimming pool is greater than 20 feet, then one ladders shall be located on opposite sides of the deep area.

B. A swimming pool or spa ladder shall be equipped with two handrails.

C. All treads on ladders shall have slip-resistant surfaces.

D. Ladder treads shall have a minimum horizontal depth of 1 1/2 inches. The distance between ladder treads shall range from a minimum of 7 inches to a maximum of 12 inches.

E. Below the waterline, there shall be a clearance of not more than 6 inches and not less than 3 inches between any ladder tread edge and the wall as measured from the side of the tread closest to the wall.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-216. Recessed Treads

A. Recessed treads with handrails may be substituted for ladders.
B. Recessed treads shall be pre-formed, readily cleanable, and designed to drain into the swimming pool or spa to prevent the accumulation of dirt in the recessed treads.
C. Each set of recessed treads shall be equipped with two handrails.
D. All recessed treads shall have slip-resistant surfaces.
E. The vertical distance between the swimming pool or spa coping edge or deck and the uppermost recessed tread shall be a maximum of 12 inches. Recessed treads at the centerline shall have a uniform vertical spacing of 12 inches maximum and 7 inches minimum.
F. Recessed treads shall be at least 5 inches deep and 12 inches wide.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-217. Decks and Deck Equipment

A. Decks, ramps, coping, and similar step surfaces shall be constructed of concrete or other inorganic material, have a slip-resistant finish, and be easily cleanable.
B. The minimum continuous unobstructed deck width, including the coping, shall be 10 feet for a public swimming pool and 4 feet for a semipublic swimming pool. The dimensional design of decks at public and semipublic swimming pools shall comply with the dimensions shown in Illustration B.
C. A minimum 5 feet of deck width shall be provided on the sides and rear of any diving equipment at a public swimming pool. A minimum 4 feet of deck width shall be provided on the sides and rear of any diving equipment at a semipublic swimming pool. If diving equipment is installed at a public swimming pool, there shall be a minimum 15 feet of deck width from the swimming pool wall to the edge of the deck behind the diving equipment [See Illustration B].
D. A continuous unobstructed deck width of at least 4 feet, which may include the coping, shall be provided on at least two contiguous sides and around at least 50% of the perimeter of a public or semipublic spa.
E. Decks shall be sloped to effectively drain either to perimeter areas or to deck drains. Drainage shall remove splash water, deck cleaning water, and rain water without leaving standing water. The minimum slope of the deck shall be 1/4 inch per 1 foot. The maximum slope of the deck shall be 1 inch per 1 foot, except for ramps.
F. Decks shall be edged to eliminate sharp corners.
G. Site drainage shall be provided to direct all perimeter deck drainage and general site and roof drainage away from a public or semipublic swimming pool or spa. Yard drains may be required to prevent the accumulation or puddling of water in the general area of the deck and related improvements.
H. Hose bibbs shall be provided along the perimeter of the deck so that all parts of the deck may be washed down. At a minimum, each hose bibb shall be protected against back siphonage with an atmospheric vacuum breaker. The Department may approve quick disconnect style hose bibbs.
I. Any valve that is installed in or under any deck shall provide a minimum 10-inch diameter access cover and a valve pit to facilitate the repair and maintenance of the valve.
J. Joints in decks shall be provided to minimize the potential for cracks due to changes in elevations or movement of the slab. The maximum voids between adjoining concrete slabs or between concrete slabs and expansion joint material shall be 3/16 inch of horizontal clearance with a maximum difference in vertical elevation of 1/4 inch. Areas where the deck joins concrete shall be protected by expansion joints to protect the swimming pool or spa from the pressures of relative movements. Construction joints where pool or spa coping meets the deck shall be watertight and shall not allow water to pass through to the underlying ground.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-218. Lighting

A. A public or semipublic swimming pool or spa and adjacent deck areas shall be lighted by natural or artificial means when they are in use.
B. A public or semipublic swimming pool or spa that is intended to be used at night shall be equipped with artificial lighting that is designed and spaced so that all parts of the swimming pool or spa, including the bottom, may be seen without glare.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-219. Water Depths

A. Except as provided in subsection (B), the minimum water depth in the shallowest area of a public or semipublic swimming pool shall be 2 feet. The maximum water depth in the shallowest area of a public or semipublic swimming pool shall be 3 feet. In public swimming pools, where racing lanes terminate, the minimum depth shall be 5 feet from the water level to the point where the vertical wall is radiused to join the floor.
B. The Department may approve a depth of less than 2 feet in a wading pool or to allow a zero depth entry swimming pool.
C. The maximum water depth in a public or semipublic spa shall be 42 inches, measured from the water level.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-220. Depth Markers

A. Water depths shall be conspicuously and permanently marked at or above the water level on the vertical wall and on the top of the coping or the edge of the deck next to a swimming pool.
  1. Depth markers on a vertical wall shall be positioned to be read from the water side.
  2. Depth markers on a deck shall be located within 18 inches of the side of the swimming pool and positioned to be read while standing on the deck facing the water. Depth markers that are located on a deck shall be made of slip-resistant materials.

B. Depth markers for a public or semipublic swimming pool shall be installed at points of maximum and minimum water depth and at all points of slope change. Depth markers are required in the shallow area at 1-foot depth intervals to a depth of 5 feet. Thereafter, depth markers shall be installed at 2-foot depth intervals. Depth markers shall not be spaced at distances greater than 25 feet.
C. Depth markers shall be located on both sides and at both ends of a public or semipublic swimming pool.
D. Depth markers shall be in Arabic numerals with a 4-inch minimum height. Arabic numerals shall be of contrasting color to the background.
E. In public swimming pools with racing lanes, approach warning markers shall be placed below the water level on the opposite walls at the ends of each racing lane. Warning markers shall be of contrasting color to the background. Warning markers shall be clearly visible in or out of the water from a minimum distance of 10 feet.

F. The shallow area of a public swimming pool shall be visually set apart from the deep area of the pool by a rope and float line.

G. Depth markers for a public or semipublic spa shall comply with all of the following:
1. A public or semipublic spa shall have permanent depth markers with numbers that are a minimum of 4 inches high. Depth markers shall be plainly and conspicuously visible from all points of entry.
2. The maximum depth of a public or semipublic spa shall be clearly indicated by depth markers.
3. There shall be a minimum of 2 depth markers at each public or semipublic spa.
4. Depth markers shall be spaced at no more than 25-foot intervals and shall be uniformly located around the perimeter of the spa.
5. Depth markers shall be positioned on the deck within 18 inches of the side of the spa. A depth marker shall be positioned so that it can be read by a person standing on the deck facing the water.
6. Depth markers that are on deck surfaces shall be made of slip-resistant material.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-221. Diving Areas and Equipment

A. The dimensions of a diving area in a public or semipublic swimming pool shall comply with minimum requirements for length, width, depth, area, and other dimensions specified in Illustration A. The diving well profile in Illustration A does not apply to a special use pool that is intended for competitive diving and has been approved by Department pursuant to R18-5-248(A).

B. Diving equipment shall be permanently anchored to the swimming pool deck. Equipment shall be rigidly constructed with sufficient bracing to ensure stability. Supports, platforms, steps, and ladders for diving equipment shall be designed to carry anticipated loads.

C. All diving stands higher than 21 inches, measured from the deck to the top of the board, shall be provided with stairs or a ladder.

D. Diving equipment shall have a durable finish. The surface finish shall be free of tears, splinters, or cracks that may be a hazard to users.

E. Steps and ladders leading to diving boards and diving platforms shall be of corrosion-resisting materials and shall have slip-resistant tread surfaces. Step treads shall be self-draining.

F. Diving boards, diving platforms, and starting blocks shall have slip-resistant tread surfaces.

G. Handrails shall be provided at all steps and ladders leading to diving boards that are 1 meter or more above the water.

H. Diving boards and diving platforms that are 1 meter or higher shall be protected with guard rails. Guard rails shall be at least 30 inches above the diving board or diving platform and shall extend to the edge of the swimming pool wall.

I. A label shall be permanently affixed to a diving board and shall include the following:
1. Manufacturer's name and address,
2. Board length, and
3. Fulcrum setting instructions.

J. The maximum diving board height over the water is 3 meters. The maximum height of a diving platform over the water is 10 meters.

K. Starting blocks shall be located in the deep end of a public swimming pool or where the depth of the water is at least 5 feet.

L. There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This clear, unobstructed vertical space shall extend horizontally at least 8 feet behind, 8 feet to each side, and 16 feet ahead of the front end of the board.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-222. Prohibition Against Diving; Warning Signs

A. Diving equipment is prohibited in a public or semipublic swimming pool that does not meet the minimum diving well dimensions specified in Illustration A. If a public or semipublic swimming pool does not meet the dimensional requirements prescribed in Illustration A for diving, then the owner shall prominently display at least one sign that cautions users that the swimming pool is not suitable for diving. The warning sign shall state "NO DIVING" in letters that are 4 inches or larger or display the international symbol for no diving.

B. Diving from the deck of a public or semipublic swimming pool into water that is less than 5 feet deep shall be prohibited. Warning markers indicating in words or symbols that diving is prohibited shall be placed on the deck within 18 inches of the side of the shallow area of the swimming pool. A warning marker shall be positioned so that it can be read by a person standing on the deck facing the water.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-223. Water Circulation System

A. A public or semipublic swimming pool or spa shall have a water circulation system that provides complete circulation of water through all parts of the swimming pool or spa and can maintain water chemistry and water clarity requirements.

B. The water circulation system for a public or semipublic swimming pool shall have a turnover rate of at least once every 8 hours. The water circulation system of a public or semipublic spa shall have a turnover rate of at least once every 30 minutes. The water circulation system for a wading pool shall have a turnover rate of at least once every hour. The water circulation system shall be designed to give the proper turnover rate without exceeding the maximum filtration rate for the filter in R18-5-227(E).

C. Water circulation system components shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

D. Water circulation system components shall be accessible for inspection, repair, or replacement.

E. Except as provided by this subsection, water withdrawn from a public or semipublic swimming pool or spa shall not be returned unless it has been filtered and adequately disinfected. Water may be withdrawn from a swimming pool for a water slide or a water fountain without being filtered or disinfected.

F. In a swimming pool complex with more than one swimming pool or where there is a combination of swimming pools and spas, each swimming pool and spa shall have a separate water circulation system.

G. Hydrotherapy jets or other devices which create roiling water or similar effects in a spa shall not be connected to the water

circulation system, but shall be operated through a separate system.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1). Manifest typographical error corrected in subsection (B) (Supp. 01-1).

R18-5-224. Piping and Fittings

A. The water velocity in discharge piping for public and semipublic swimming pools and spas shall not exceed 10 feet per second, except for copper discharge piping where the velocity shall not exceed 8 feet per second. The water velocity in suction piping shall not exceed 6 feet per second. Piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head of the pump.

B. Water circulation system piping and fittings shall be constructed of materials that are able to withstand 150% of normal operating pressures. Suction piping shall be of sufficient strength so that it does not collapse when there is a complete shutoff of flow on the suction side of the pump. A licensed Arizona contractor shall conduct an induced static hydraulic pressure test of the water circulation system piping at 25 pounds per square inch for at least 30 minutes. The pressure test shall be performed before the deck is poured. Pressure in the water circulation system piping shall be maintained during the deck pour.

C. Water circulation piping and fittings shall be made of nontoxic, corrosion-resistant materials.

D. Water circulation piping and fittings shall be installed so that piping or fittings do not project into a public or semipublic swimming pool or spa in a manner that is hazardous to users.

E. Piping that is subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves that will permit the complete drainage of the water in the swimming pool or spa.

F. Piping shall be designed to drain the swimming pool or spa water by removing drain plugs, manipulating valves, or other means.

G. Piping systems shall be identified by color or by stencils or labels located at conspicuous points.

H. Plastic water circulation piping shall comply with American National Standard/NSF International Standard Number 14, "Plastics Piping System Components and Related Materials," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised September, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-225. Pumps and Motors

A. A pump and motor shall be provided for each water circulation system. The pump shall be sized to meet but not to exceed the flow rate required for filtering against the total head developed by the complete water circulation system. The pump shall be sized to comply with the turnover rate prescribed in R18-5-223(B).

B. Pumps and motors shall be readily and easily accessible for inspection, maintenance, and repair. When the pump is below the waterline, valves shall be installed on permanently connected suction and discharge lines. The valves shall be readily and easily accessible for maintenance and removal of the pump.

C. Each motor shall have an open, drip-proof enclosure. Each motor shall be constructed electrically and mechanically to perform satisfactorily and safely under the conditions of load in the environment normally encountered in swimming pool or spa installations. Each motor shall be capable of operating the pump under full load with a voltage variation of ± 10% from the nameplate rating. Each motor shall have thermal or current overload protection to provide locked rotor and running protection. Thermal or current overload protection may be built into the motor or in the line starter.

D. The pump shall be equipped with an emergency shut-off switch that is located within the swimming pool or spa enclosure to cut off power to the water circulation system if someone is entrapped on a main drain or suction outlet.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-226. Drains and Suction Outlets

A. A public and semipublic swimming pool shall be equipped with at least two main drains located in the deepest part of the swimming pool or a single gravity drain that discharges to a surge tank.

B. Each main drain shall be covered by a grate that is not be readily removable by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe.

C. The spacing of the main drains shall not be greater than 20 feet on centers and not more than 15 feet from each side wall.

D. A minimum of two suction outlets shall be provided for each pump in a suction outlet system for a public or semipublic spa. The suction outlets shall be separated by a minimum of 3 feet or located on two different planes [that is, one suction outlet on the bottom and one on a vertical wall or one suction outlet each on two separate vertical walls]. The suction outlets shall be plumbed to draw water through them simultaneously through a common line to the pump. Suction outlets shall be plumbed to eliminate the possibility of entrapping suction.

E. If the suction outlet system for a public or semipublic swimming pool or spa has multiple suction outlets that can be isolated by valves, then each suction outlet shall protect against user entrapment by either an antivortex cover, a grate, or other means approved by the Department.

F. A public or semipublic spa may be equipped with a single gravity drain which discharges to a surge tank instead of suction outlets. The total velocity of water through grate openings of the drain shall not exceed 2 feet per second.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-227. Filters

A. Filters shall be designed, located, and constructed to permit removal of filter manhole covers or heads for inspection, replacement, or repair of filter elements or filter media. No filtration system shall be installed beneath the surface of the ground or within an enclosure without providing adequate access for inspection and maintenance.

B. Pressure-type filters shall be equipped with a means to release internal pressure. Each pressure filter shall be equipped with an air relief piping system connected at an accessible point near the crown. Automatic air relief systems may be used instead of manual systems. The design of a filter with an automatic air relief system as its principal means of air release shall include lids that provide a slow and safe release of pressure. The design of a separation tank used in conjunction with any filter tank shall include a manual means of air release or a lid which provides a slow and safe release of pressure as it is opened.

C. Pressure filter systems shall be equipped with a sight glass installed on the waste discharge pipe.

D. Swimming pool and spa filters shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

E. The maximum filtration rate shall not exceed the design flow rate prescribed by the National Sanitation Foundation Standard 50 for commercial filters. In no case shall the maximum filtration rate exceed the following:

1. The rate of filtration in a high-rate sand filter shall not exceed 25 gallons/minute/square foot.
2. The rate of filtration of a diatomaceous earth filter shall not exceed 2 gallons/minute/square foot.
3. The rate of filtration of a cartridge filter shall not exceed 0.375 gallons/minute/square foot.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-228. Return Inlets

A. Adjustable return inlets shall be provided for each public and semipublic swimming pool or spa. Return inlets shall be designed, sized, and installed to produce a uniform circulation of water throughout the swimming pool or spa. Where surface skimmers are used, return inlets on vertical walls shall be located to help bring floating particles within range of the surface skimmers.

B. A public or semipublic swimming pool shall have a minimum of two return inlets, regardless of the size of the swimming pool. The number of return inlets shall be based on two return inlets per 600 square feet of surface area, or fraction thereof.

C. Return inlets in a public or semipublic swimming pool shall be on a closed loop piping system. Public or semipublic spas with three or more return inlets shall be on a closed loop piping system.

D. Where the width of a public or semipublic swimming pool exceeds 30 feet, bottom returns shall be required. Bottom returns shall be flush with the pool bottom or designed to prevent injury to users.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-229. Gauges

A. Pressure gauges shall be installed on the water circulation system for each public and semipublic swimming pool and spa. Pressure gauges shall be installed in accessible locations where they can be read easily.

B. Pressure gauges shall be installed on the inlet and outlet manifold of the filter. Pressure gauges shall read at intervals of 1 pound per square inch [psi].

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-230. Flow meter

A public swimming pool shall be equipped with, a flow meter which indicates the rate of backwash through the filter. The flow meter shall be installed between the pump and the filter on a straight section of pipe in accordance with the manufacturer's specifications in a location where it can be read easily. The flow meter shall measure the rate of flow through the filter in gallons per minute and shall be accurate to within 5% under all conditions of flow. The flow meter shall have an indicator with a range of at least 150% of the normal flow rate.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-231. Strainers

The water circulation system shall include a removable strainer located upstream of the pump to prevent solids, debris, hair, or lint from reaching the pump and filters. The strainer shall be made of corrosion-resistant material. A strainer shall have openings that have a total area which is equal to at least four times the area of the suction piping.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-232. Overflow Collection Systems

A. An overflow collection system shall be installed in each public or semipublic swimming pool or spa.

B. The overflow collection system shall be designed and constructed so that the water level of the swimming pool is maintained at the mid-point of the operating range of the system's rim or weir device.

C. Rim type overflow collection systems shall be installed on at least two opposite sides and have a total length of at least 50% of the perimeter of a public or semipublic swimming pool. The overflow collection system shall be capable of carrying 50% of the design capacity of the water circulation system.

D. If overflow gutters are used, they shall be installed continuously around the swimming pool with the lip of the gutter level throughout its perimeter. Overflow gutters shall be provided with sufficient opening at the top and width at the bottom to permit easy cleaning. The overflow gutter bottom shall be pitched 1/4 inch per foot to drainage outlets located not more than 10 feet apart. Outlet piping shall be sized to circulate at least 50% of the capacity of the water circulation system and be properly covered by a drain grate. The surge tank for the overflow gutters shall be equipped with float controls which regulate the main drain, fill line, and overflow. The system surge capacity shall not be less than one gallon for each square foot of swimming pool surface area. Stainless steel gutters and other specialty gutter systems may be used if they are hydraulically equivalent to overflow gutters.

E. Surface skimmers shall be recessed into the swimming pool or spa wall and shall be installed to achieve effective skimming action throughout the swimming pool or spa.

1. A surface skimmer shall be provided for each 400 square feet of surface area, or fraction thereof, of a public or semipublic swimming pool. A minimum of two surface skimmers are required in a public or semipublic swimming pool. A surface skimmer shall be provided for each 200 square feet of surface area, or fraction thereof, of a public or semipublic spa.
2. The overflow slot shall be set level and shall not be less than 8 inches in width at the narrowest section.
3. The rate of flow through the skimmers shall be a minimum of 75% of the water circulation system capacity. Surface skimmers shall be designed to carry at least 30 gallons per minute per lineal foot of weir throat.
4. Where three or more surface skimmers are used, they must be on a closed loop piping system.
5. At least one surface skimmer shall be located on the side or near the corner of the swimming pool that is downwind of the area's prevailing winds.
6. Main drain piping shall be designed to carry at least 50% of the design flow.

F. Mixed inlet types [for example, surface skimmers and gutters] are prohibited in a public or semipublic swimming pool.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-233. Vacuum Cleaning Systems
A vacuum cleaning system shall be provided for each public and semipublic swimming pool. A vacuum cleaning system shall not create a hazard or interfere with the operation or use of the swimming pool. In integral systems, a sufficient number of vacuum cleaner fittings shall be located in accessible positions at least 10 inches below the water line. Alternatively, vacuum cleaner fittings may be installed as an attachment to the surface skimmers. A pressure cleaning system may be installed in addition to the required vacuum cleaning system.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-234. Disinfection
A. An adjustable automatic chemical feeder shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa. Timers on disinfection equipment are prohibited. Disinfection shall be accomplished by chlorination or by another method that is approved by the Department. The method of disinfection shall effectively maintain an adequate disinfectant residual in the water which is subject to field testing by methods that are easy to use and accurate.
1. Chlorine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a free chlorine residual of 1.0 to 3.0 ppm. Chlorine disinfection equipment for a public or semipublic spa shall be designed to maintain a free chlorine residual of 3.0 to 5.0 ppm.
2. Bromine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a bromine residual of 2.0 to 4.0 ppm. Bromine disinfection equipment for a public or semipublic spa shall be designed to maintain a bromine residual of 3.0 to 5.0 ppm.

B. The use of chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization is permitted. If used, chlorinated isocyanurates shall be fed so as to maintain required disinfectant residual levels. Cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, shall not exceed 150 ppm.

C. The use of chloramines as a primary disinfectant of swimming pool or spa water is prohibited.

D. The addition of gaseous disinfectant directly into a public or semipublic swimming pool is prohibited. The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa. A chlorine gas disinfection system shall not be used for the disinfection of water in a public or semipublic spa.

E. A common chlorine gas disinfection system may be utilized in separate swimming pools if separate metering and feeding devices are provided for each swimming pool.

F. If gaseous chlorine is used for disinfection, the following shall be provided:
1. The chlorinator, chlorine cylinders, and associated chlorination equipment shall be located in a separate well ventilated enclosure at or above ground level. The enclosure shall be reasonably gas-tight, noncombustible, and corrosion-resistant. The door of the enclosure shall open to the outside and shall not open directly toward the swimming pool.
2. If chlorination equipment is placed in a room, then an exhaust fan or gravity ventilation system shall be provided. Mechanical exhausters shall take suction 6 inches or less above the floor and discharge through corrosion-resistant louvers to a safe outside location. A gravity ventilation system shall be designed and constructed to discharge to the outside from floor level. Fresh air intakes shall be located no closer than 3 feet above the ventilation discharge. Chlorine room exhausts shall be directed away from the swimming pool to an area which is normally unoccupied. Chlorine room fans shall be capable of completely changing the air in the room at least once a minute.
3. Electrical switches to control lighting and ventilation in the chlorine room shall be located on the outside of the enclosure and adjacent to the door.
4. Chlorine cylinders shall be kept in an upright position and securely anchored to prevent them from falling. Chlorine cylinders may be stored indoors or out. If stored outside, chlorine cylinders shall not be stored in direct sunlight. Chlorine cylinders shall not be stored near an elevator, ventilation system, or heat source.
5. A warning sign shall be placed on the outside of the door to the chlorine room which cautions persons of the danger of chlorine gas within the enclosure. The warning shall be in letters 3 inches high or larger. The door to the chlorine room shall be provided with a shatter resistant inspection window.
6. Chlorinators shall be a solution-feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Chlorinators shall be designed to prevent the backflow of water into the chlorine solution container.

G. Granular, tablet, stick, and other forms of dry disinfectant shall be fed by an adjustable automatic feeding device.

H. Disinfection equipment and chemical feeders shall comply with the requirements set forth in American National Standard/NSF International Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

I. If a chemical feeder is used, it shall be installed to inject solution downstream from the filter and the heater. An erosion-type feeder may be installed to feed solution to the suction side of the pump. A chemical feeder shall be wired so it cannot operate unless the filter pump is running.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-235. Cross-Connection Control
A. Cross-connections between the distribution system of a public water system and the water circulation system of a public or semipublic swimming pool or spa are prohibited.

B. Potable water for make-up water purposes may be introduced into a public or semipublic swimming pool or spa in any of the following ways:
1. Through an over-the-rim spout with an air-gap of at least twice the diameter of the pipe and not less than 6 inches above the overflow level. If an over-the-rim spout is used, it shall be located so that it does present a tripping hazard. The open end of an over-the-rim spout shall have no

sharp edges and shall not protrude more than 2 inches beyond the edge of the swimming pool or spa wall;

2. Through a float controlled make-up water feed tank with an air gap of at least 3 inches above the overflow level; or
3. Through a submerged inlet that is protected against back-siphonage by at least a pressure vacuum breaker that is installed so that the bottom of the backflow prevention assembly is a minimum of 12 inches above the level of the coping.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-236. Disposal of Filter Backwash, Wasted Swimming Pool or Spa Water, and Wastewater

All sewage from plumbing fixtures, including urinals, toilets, lavatories, showers, drinking fountains, floor drains, and other sanitary facilities shall be disposed of in a sanitary manner. Filter backwash and wasted swimming pool or spa water shall be discharged into a sanitary sewer through an approved air gap, an approved subsurface disposal system, or by other means that are approved by the Department. The method of disposal shall comply with applicable disposal requirements established by a county, municipal, or other local authority. There shall be no direct physical connection between the sewer system and the water circulation system of a public or semipublic swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-237. Lifeguard Chairs

Each public swimming pool shall have at least one elevated lifeguard chair for each 3,000 square feet of pool surface area or fraction thereof. At least one lifeguard chair shall be located close to the deep area of the swimming pool and shall provide a clear, unobstructed view of the swimming pool bottom. If a public swimming pool is provided with more than one lifeguard chair or the width of the public swimming pool is 45 feet or more, then lifeguard chairs shall be located on each side of the public swimming pool.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-238. Lifesaving and Safety Equipment

A. Public and semipublic swimming pools shall have lifesaving and safety equipment that is conspicuously and conveniently located and maintained ready for immediate use at all times.

B. Each public or semipublic swimming pool shall have one ring buoy or a similar flotation device. Each ring buoy or flotation device shall be attached to 50 feet of 1/4 inch rope.

C. Each semipublic and public swimming pool shall have at least one shepherd crook that is mounted on a rigid 16-foot pole.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-239. Rope and Float Lines

A rope and float line shall be installed across each public swimming pool on the shallow side of the break in grade between the shallow and deep portions of the pool [that is, within 1 to 2 feet of the point where the floor slope begins to exceed 1 foot in 10 feet]. The rope shall be a minimum of 3/4 inch in diameter and supported by floats spaced at intervals not greater than 7 feet. The rope and float line shall be securely fastened to wall anchors that are made of corrosion-resistant materials. The wall anchors shall be recessed or have no projection that constitutes a hazard when the float line is removed.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-240. Barriers

A. A public swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 6 feet high. A semipublic swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 5 feet high. The height of the fence, wall, or barrier shall be measured on the side of the barrier which faces away from the swimming pool or spa.

B. Fences or walls shall:

1. Be constructed to afford no external handholds or footholds;
2. Be of materials that are impenetrable to small children;
3. Have no openings or spacings of a size that a spherical object 4 inches in diameter can pass through; and
4. Be equipped with a gate that opens outward from the swimming pool or spa. The gate shall be equipped with a self-closing and self-latching closure mechanism or a locking closure located at or near the top of the gate, on the pool side of the gate, and at least 54 inches above the floor.

C. The distance between the horizontal components of a fence shall not be less than 45 inches apart. The horizontal members shall be located on the interior side of the fence. Spacing or openings between vertical members shall be of a size that a spherical object 4 inches in diameter cannot pass through.

D. The maximum mesh size for a wire mesh or chain link fence shall be a 1 3/4 inches square.

E. Masonry or stone walls shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

F. If a wall of a building serves as part of the barrier around a public or semipublic swimming pool or spa, there shall be no direct access to the swimming pool or spa through the wall except as follows:

1. Windows leading to the swimming pool or spa area shall be equipped with a screwed-in place wire mesh screen or a keyed lock that prevents opening the window more than 4 inches.
2. A hinged door leading to the swimming pool or spa area shall be self-closing and shall have a self-latching device. The release mechanism of the self-latching device shall be located at least 54 inches above the floor.
3. If an additional set of doors is required by the fire code allowing access to the swimming pool or spa, they shall be self-closing and self-latching, equipped with panic bars no less than 54 inches from the floor to the bottom of the bar and designated "For Emergency Use Only."
4. Sliding doors leading to the swimming pool or spa area are prohibited except for sliding doors that are self-closing and self-latching.

G. If a barrier is composed of a combination concrete masonry unit and wrought-iron, the wrought iron portion shall be installed flush with the outside vertical surface of the concrete masonry unit. The space between the wrought iron and the concrete masonry unit shall be 1/2 inch or less. The vertical members of the wrought iron shall be spaced 4 inches on center.

H. Filtration, disinfection, and water circulation equipment shall be enclosed by a wall or fence.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-241. Public Swimming Pools; Bathhouses and Dressing Rooms

A. Separate dressing rooms shall be provided for each sex. Dressing rooms shall be equipped with baskets or other checking facilities.

B. All entrances to and exits from the dressing rooms shall be effectively screened to interrupt the line of sight of persons outside the dressing rooms.

C. Walls and partitions of dressing rooms, locker rooms, toilets, and showers shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide a smooth and easily cleanable surface. Partitions shall be designed so that a waterway is provided between partitions and the floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

D. Floors shall be of nonslip construction, free of cracks or openings, and sloped to adequate drains so the surface will be free of standing water and puddles. Floors shall be sloped not less than 1/4 inch per foot toward the drains to ensure positive drainage. Carpeting is prohibited.

E. All furniture shall be of simple character and easily cleanable. Locker compartments, partitions, booths, furniture, and other appurtenances in dressing rooms shall be so installed or raised above the floor to permit washing down the dressing rooms and bathhouse interiors.

F. An adequate number of hose bibs shall be provided for washing down the dressing room or bathhouse interior.

G. Dressing rooms, toilets, and showers shall be provided with adequate lighting and ventilation.

H. Toilet facilities shall be provided for each sex. For male users, there shall be one toilet and one urinal for each 100 bathers or fraction thereof. For female users, there shall be one toilet for each 50 bathers, or fraction thereof. In no case shall less than two toilets be provided for female users. Sanitary napkin dispensers shall be installed in toilet or shower areas designated for female users.

I. Shower and handwashing facilities with hot and cold water and soap shall be provided for each dressing room. Hot and cold water shall be provided at all shower heads. The water heater and thermostatic mixing valve shall be inaccessible to users and shall be capable of providing two gallons per minute of 90°F water to each shower head. A minimum of two shower heads shall be provided in each dressing room. Each dressing room shall have one shower head for each 50 bathers or fraction thereof.

J. One lavatory with an unbreakable mirror shall be provided in each dressing room for the first 100 users. An additional lavatory and unbreakable mirror shall be provided for each additional 100 users or fraction thereof. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-242. Semipublic Swimming Pools; Toilets and Lavatories

A. A bathroom with a minimum of one toilet shall be provided for each sex.

B. Each bathroom shall have at least one lavatory. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

C. An establishment that operates a semipublic swimming pool or spa and provides a private room with a toilet and lavatory for bathers shall be deemed to have complied with the requirements of this Section.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-243. Drinking Water Fountains

Drinking water from an approved source and dispensed through one or more drinking fountains shall be located on the deck of each public swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-244. Wading Pools

A. A wading pool is a type of public or semipublic swimming pool. The design criteria prescribed in this Article for public or semipublic swimming pools apply, except as provided in this Section.

B. A wading pool shall be physically set apart from public and semipublic swimming pools.
1. A wading pool shall be separated from a public swimming pool by a minimum 4-foot high fence or partition with a self-closing, self-latching gate.
2. A wading pool shall be separated from a semipublic swimming pool by at least 4 feet of deck.
3. A wading pool shall not be located adjacent to the deep area of a public or semipublic swimming pool.

C. A wading pool shall have a maximum depth of 24 inches. Water depths may be reduced from the stated maximums and brought to zero at the most shallow point of the wading pool.

D. The floor of a wading pool shall be uniform with a maximum slope of 1 foot of fall in 10 feet. The floor of a wading pool shall have a slip-resistant surface.

E. All wading pools shall have separate equipment for water circulation and disinfection. There shall be no cross-connection between the water circulation system of a wading pool and a public or semipublic swimming pool. The water in a wading pool shall have a maximum turnover cycle of 1 hour.

F. At least two main drains shall be provided at the deepest point in a wading pool. Each main drain shall be covered by a grate which cannot be removed by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe. In the alternative, a wading pool may be equipped with a single gravity drain which discharges to a surge tank.

G. Surface skimmers shall be provided on the basis of at least one skimmer for each 200 square feet of wading pool surface area. Surface skimmer flow rates shall be the same as required for public and semipublic swimming pools. Where only one skimmer is provided, the main drain may be connected through the skimmer.

H. Return inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the wading pool. Where three or more return inlets are required, they shall be on a closed loop piping system.

I. Suction outlets in a wading pool shall have plumbing provisions so as to relieve any possibility of entrapping suction.

J. Gaseous chlorine shall not be used for the disinfection of wading pool water.

K. A drinking fountain at a height convenient to small children or a drinking fountain with a raised step shall be provided in the area of the wading pool.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-245. Timers for Public and Semipublic Spas
The timer for a public or semipublic spa which controls the hydrotherapy jets shall be located at least 5 feet from the spa and shall have a maximum time limit of 15 minutes.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-246. Air blower and Air Induction Systems for Public and Semipublic Spas
An air blower system or air induction system for a public or semipublic spa shall comply with the following requirements:

1. The system shall prevent water backflow which could cause an electrical shock hazard.
2. Air intake sources shall not introduce water, dirt, or contaminants into the spa.
3. The system shall be properly sized for a commercial spa application.
4. If the air blower is installed within an enclosure or indoors, then adequate ventilation shall be provided.
5. Integral air passages shall be pressure tested and shall provide structural integrity to a value of 1 1/2 times the intended working pressure.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-247. Water Temperature in Public and Semipublic Spas
The temperature of heated water coming into a public or semipublic spa shall not exceed 104°.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-248. Special Use Pools

A. A person who intends to construct a special use pool shall notify the Department and provide plans, specifications, and a description of the intended use of the special use pool. The Department shall use best professional judgment in approving a special use pool, taking into consideration the intended use of the pool, the conditions under which it will operate, and the safety of users. The Department may consider the design requirements prescribed by an official sanctioning athletic body such as the National Collegiate Athletic Association [NCAA], National Federation of State High School Associations [NFSHSA], U.S. Swimming, U.S. Diving, or the Internationale de Natation Amateur [FINA] in using best professional judgement to approve a special use pool that is intended for competitive swimming and diving.

B. A special use pool that is designed with exercise or training bars in the pool shall be restricted to the special use when the bars are located in the pool. The bars shall:

1. Be constructed of durable and corrosion-resistant material;
2. Be sealed, welded shut, or capped at both ends to prevent retention of water within the bars;
3. Bars may be removable. Removable bars shall be wedge anchored in place and the anchors shall be covered. Water-tight anchor plugs [95% efficiency] shall be provided when the bars are removed; and
4. Extend not more than 4 inches from the side of the pool into the water. The minimum clear opening from the inside of the bar to the side of the swimming pool shall not be less than 2 inches.

D. A special use pool that is designed with a ramp shall comply with the following:

1. The ramp shall be constructed of slip-resistant material;
2. The slope of the ramp shall not exceed 1 foot in 12 feet;
3. The width of the ramp shall be at least 3 feet;
4. The ramp shall have a level platform at the top and the bottom of the ramp;
5. The ramp shall be equipped with at least a 3 1/2 foot high guardrail installed on the deck and extending the length of the ramp;
6. The ramp shall be constructed with return inlets located on the pool and ramp walls along the length of the ramp.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-249. Variances

A. The Department may grant a variance from a requirement prescribed in this Article upon a demonstration by the applicant that an alternative design, material, appurtenance, or technology is equivalent to a requirement prescribed in this Article. If a variance is granted, it shall be conditioned upon the applicant's use of the approved alternative.

B. The Department shall not grant a variance that results in an unreasonable risk to the health of swimming pool or spa users.

C. The applicant shall request a variance in writing. A variance request shall contain the following information:

1. Identification of the requirement prescribed in this Article for which a variance is requested;
2. Explanation of the reasons why the applicant cannot comply with the requirement;
3. A complete description of the alternative design, material, or technology to be installed and used in the swimming pool or spa, including design plans, specifications, and a description of the cost;
4. A demonstration that the alternative design, material, or technology to be installed and used in the swimming pool or spa is equivalent to the requirement in this Article and will not result in an unreasonable risk to users; and
5. A statement that the applicant will perform reasonable requirements prescribed by the Department that are conditions of a variance.

D. The applicant shall submit a request for a variance with an application for design approval. The Department shall determine whether the application for design approval and the variance request are complete. Within 30 days after the date of the submittal of the application for design approval and the variance request, the Department shall issue a written notice to the applicant that states that the request for a variance and the application for design approval are complete or which states that the request for a variance or the application for design approval is incomplete and identifies specific information deficiencies in the application for design approval or the variance request.

E. The Department may convene an advisory committee consisting of representatives of public and semipublic swimming pool and spa owners, public and semipublic swimming pool and spa building contractors, professional engineers, and county environmental and health departments to make a recommendation on a variance request.

F. If the Department grants the request for a variance, the Department shall identify the requirement for which the variance is granted, specify any conditions to the grant of a variance, and issue a design approval. If the Department denies the request for a variance, the Department shall issue a notice of intent to deny the request for a variance to the applicant. The notice shall state the reasons for the denial of the request for a variance and shall include a description of the applicant's right to request a hearing on the denial of the variance request pursuant to A.R.S. § 41-1092.03 and to request an informal settlement

conference pursuant to A.R.S. § 41-1092.06. If the Department denies a request for a variance, the Department may either deny the application for design approval or issue a design approval that requires compliance with the requirement for which the variance is requested.

G. In considering a request for a variance from a requirement prescribed in this Article, the Director shall consider the following factors:

1. The intended use of the public or semipublic swimming pool or spa;
2. The safety of the alternative design, material, or technology for which a variance is requested; and
3. The cost and other economic considerations associated with requiring compliance with the requirement prescribed in this Article as compared to the alternative for which a variance is requested.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-250. Inspections

A. An inspector from the Department, upon presentation of credentials, may enter into any public or semipublic swimming pool or spa to determine compliance with this Article. The inspector may inspect records, equipment, and facilities; take photographs; and take other action reasonably necessary to determine compliance with this Article.

B. The owner or manager of a public or semipublic swimming pool or spa may accompany the inspector during an inspection.

C. An inspector from the Department may inspect a public or semipublic swimming pool or spa without giving prior notice of the inspection to the owner or operator of the swimming pool or spa.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

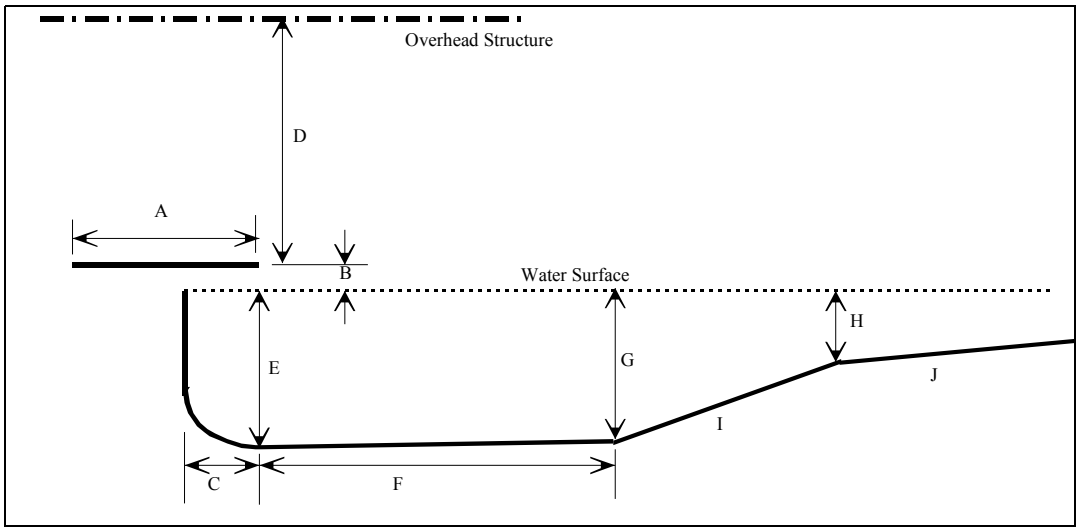
R18-5-251. Enforcement

A. If an inspector finds a violation of this Article, the Department may issue a notice of violation to the owner of a public or semipublic swimming pool or spa. A notice of violation shall state specifically the nature of the violation and shall allow a reasonable time for the owner to correct the violation.

B. If the Director has reasonable cause to believe that a person has constructed a public or semipublic swimming pool or spa in violation of this Article, the Director may order the closure of the swimming pool or spa by issuing a cease and desist order by following the procedures for abatement of environmental nuisances in A.R.S. § 49-142.

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

Illustration A. Diving Well Dimensions for Swimming Pools



Note: This profile does not apply to a special use pool that is designed for competitive diving.

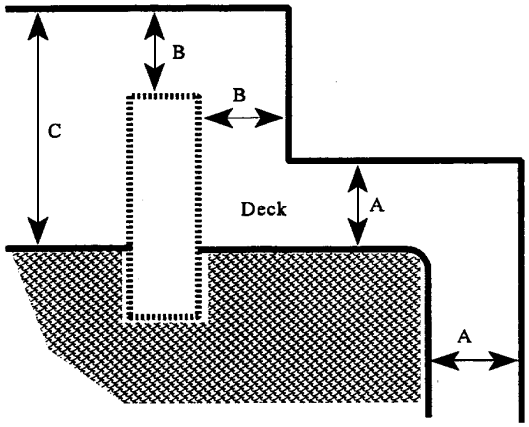
A. Maximum length of diving board	10 feet
B. Maximum height of board above the water	20 inches
C. Overhang of the board from wall	Minimum: 2 feet Maximum: 3 feet
D. Minimum distance to an overhead structure	15 feet
E. Minimum depth of water at the plummet	9 feet
F. Distance from plummet to start of upslope	18 feet
G. Minimum depth of water at start of the upslope	Depth of water at plummet minus 6 inches

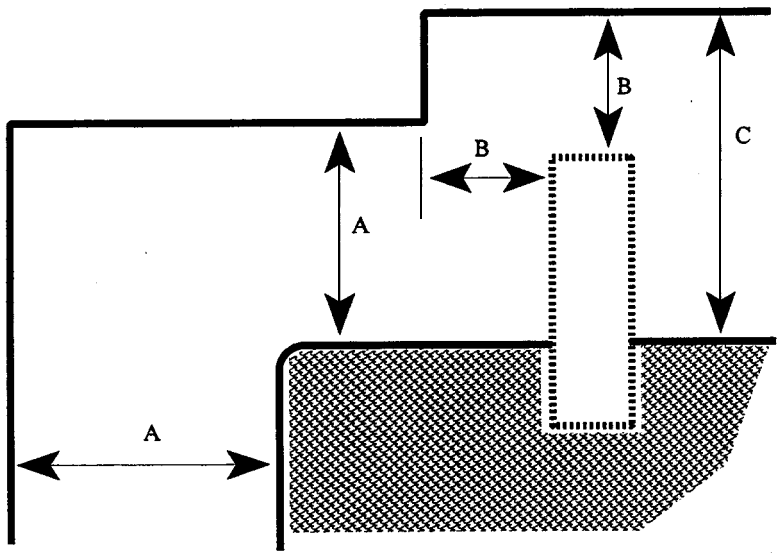
H. Depth of water at the breakpoint	Public swimming pool: 5 feet Semipublic swimming pool: 4 feet
I. Maximum slope: breakpoint towards deep end	1 foot of fall in 3 feet
J. Slope of bottom in shallow area	1 foot of fall in 10 feet
Minimum width of pool in diving area	20 feet
From plummet to pool wall at the side	10 feet

Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

Illustration B. Minimum Distance Requirements for Decks

Dimension	Public (in Feet)	Semipublic (in feet)
A	**10**	**4**
B	**5**	**4**
C	**15**	**11**





Historical Note
Adopted effective February 19, 1998 (Supp. 98-1).

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

R18-5-301. Definitions
In addition to the definitions established in R18-9-101, the following terms apply to this Article:

1. "Certified Areawide Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.
2. "Designated management agency" means those entities designated in a Certified Areawide Water Quality Management Plan to manage sewage treatment facilities and sewage collection systems in their respective area.
3. "Designated water quality planning agency" means the single representative organization designated by the Governor under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4) as capable of developing effective areawide sewage treatment management plans for the respective area. The state acts as the planning agency for those non-tribal portions of the state for which there is no designated water quality planning agency.
4. "Facility Plan" means the plans, specifications, and estimates for a proposed sewage treatment facility, prepared under Section 201 and 203 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), and submitted to the Department by and for a designated management agency.
5. "General Plan" means a municipal statement of land-development policies that may include maps, charts, graphs, and text that list objectives, principles, and standards for local growth and development enacted under state law.
6. "Service area" means the geographic region specified for a designated management agency by the applicable Certified Areawide Water Quality Management Plan, Facility Plan, or General Plan.
7. "State water quality management plan" means the following elements:
   a. Certified Areawide Water Quality Management Plans and amendments;
   b. Water quality rules and laws;
   c. Final total maximum daily loads approved by the United States Environmental Protection Agency for impaired waters;
   d. Water quality priorities established by the Department;
   e. Intergovernmental agreements between the Department and a designated water quality planning agency or a designated management agency; and
   f. Active management area plans adopted by the Department of Water Resources.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-302. Certified Areawide Water Quality Management Plan Approval
A designated water quality planning agency shall submit a proposed Certified Areawide Water Quality Management Plan or plan amendment to the Director for review and approval. Upon approval, the Governor or the Governor's designee shall:

1. Certify that the plan or plan amendment is incorporated into and is consistent with the state water quality management plan, and
2. Submit the plan or plan amendment to the United States Environmental Protection Agency for approval.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-303. Determination of Conformance
All sewage treatment facilities, including an expansion of a facility, shall, before construction, conform with the Certified Areawide Water Quality Management Plan, Facility Plan, and General Plans as specified in subsections (1) and (2).

1. The Department shall make the determination of conformance if the sewage treatment facility or expansion of the facility conforms with the Certified Areawide Water Quality Management Plan and Facility Plan that prescribe a configuration for sewage treatment and sewage collection system management by a designated management agency within the service area.
2. If the condition specified in subsection (1) is not met, the Department shall make the determination of conformance as follows:
   a. If no Facility Plan is applicable and a Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall rely on the Certified Areawide Water Quality Management Plan for the determination of conformance.
   b. If no Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall make the determination of conformance based on conformance with applicable General Plans and after conferring with the designated water quality planning agency for the area and any responsible and affected governmental unit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

ARTICLE 4. SUBDIVISIONS

R18-5-401. Definitions
In this Article unless the context otherwise requires:

1. "Approved" or "approval" means approved in writing by the Department.
2. "Condominium" means a subdivision established as a horizontal property regime pursuant to A.R.S. § 33-551 et seq.
3. "Department" means the Department of Environmental Quality or its designated representative.
4. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
5. "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
6. "Subdivision" has the meaning defined in A.R.S. § 32-2101.

Historical Note
Correction in subsection (E) citation to A.R.S. should have read § 32-2101. Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1011 renumbered without change as Section R18-5-401 (Supp. 89-2).

R18-5-402. Approval of plans required

A. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, or offered to the public in any manner, and no permanent building shall be erected thereon until plans and specifications for the water supply, sewage disposal and method of garbage disposal to be provided in or to serve such subdivision shall have been submitted to and approved by the Department.

B. The plans of any proposed water supply and sewage disposal system shall be submitted in quadruplicate on a plat of the subdivision as recorded, or as will be recorded, in the office of the county recorder.

Historical Note
Former Section R9-8-1012 renumbered without change as Section R18-5-402 (Supp. 89-2).

R18-5-403. Application for approval

A. An application for approval, prepared in duplicate on forms furnished by the Department, shall be filed at the time the plans are submitted for approval. The form shall be completely filled out unless indicated otherwise.

B. The distance to the nearest public water supply main and to a sewer main of a municipal or community system shall be given.

Historical Note
Former Section R9-8-1013 renumbered without change as Section R18-5-403 (Supp. 89-2).

R18-5-404. Size of lots

The minimum size lot approved by the Department will be governed largely by the area necessary for the safe accommodation of individual wells and/or sewage disposal systems. Where both the water supply and sewage disposal system must be developed on the same lot, the minimum size shall be at least one acre, excluding streets, alleys and other rights-of-way. Where water from a central system is provided for residential uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system based on a four-bedroom house within the bounds of the property allowing a minimum of five feet distance to the property lines. Where lots are zoned for commercial uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system within the bounds of the property allowing a minimum of five feet distance to the property lines.

Historical Note
Former Section R9-8-1014 renumbered without change as Section R18-5-404 (Supp. 89-2).

R18-5-405. Responsibility of subdivider

Where plans for a subdivision include a public water supply system, or public sewerage system, it shall be the responsibility of the subdivider to provide the facilities to each lot in the subdivision prior to human occupancy. The installation of such facilities shall be in accordance with plans, or any revisions thereof, approved by the Department.

Historical Note
Former Section R9-8-1015 renumbered without change as Section R18-5-405 (Supp. 89-2).

R18-5-406. Public water systems

A. Where water from an approved public water system is proposed for use in a subdivision, the inside diameter, length, and location of all proposed and existing water mains and valves necessary to serve each and every lot shall be shown on the subdivision plat. If the existing main to which a connection will be made is not immediately adjacent to the property, the direction and distance shall be indicated on the plat by an arrow or other suitable means.

B. A letter shall be obtained and submitted with the application for approval of the subdivision from responsible officials of the water system indicating that an agreement has been reached to supply water to each individual lot in the subdivision.

C. Where the owner of a subdivision, or other interested person, firm, company or corporation, proposes to develop a source or sources of supply and to construct a distribution system to furnish water to the subdivision, either free or for charge, complete details of the proposed water system including plans and specifications shall be furnished. Department approval of the supply and proposed system shall first be obtained before an approval for the sale of lots will be granted. The installation of such facilities shall be in accordance with the plans, and any revisions thereof, approved by the Department.

D. Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Article 2, except those distribution lines which are a common element of a condominium shall be exempt from A.A.C. R18-4-234.

E. Where water from an approved public water system is proposed for use in a subdivision, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public water system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

F. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public water system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. is compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; nor
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

Historical Note
Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1021 renumbered without change as Section R18-5-406 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-407. Public sewerage systems

A. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, it shall be necessary to show lines indicating the approximate location and size of the sewers on the subdivision plat.

B. Where the proposed sewers will connect to an existing public sewerage system, a letter from officials of the system shall be required stating that acceptable plans have been submitted and that the subdivider has been granted permission to connect to and become a part of the public sewerage system.

C. Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which

are a common element of a condominium shall be exempt from R18-5-811.

D. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public sewerage system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

E. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public sewerage system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. In compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; nor
2. Making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

Historical Note
Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1026 renumbered without change as Section R18-5-407 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-408. Individual sewage disposal systems

A. Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.

B. Where soil conditions and terrain features or other conditions are such that individual sewage disposal systems cannot be expected to function satisfactorily or where groundwater or soil conditions are such that individual sewage disposal systems may cause pollution of groundwater, they are prohibited.

C. Where such installations may create an unsanitary condition or public health nuisance, individual sewage disposal systems are prohibited.

D. The use of cesspools is prohibited.

E. Where an individual sewage disposal system is proposed, the following conditions shall be satisfied:
1. A geological report shall be made by an engineer, geologist or other qualified person. The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that individual disposal systems could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of individual sewage disposal systems.
3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

Historical Note
Former Section R9-8-1027 renumbered without change as Section R18-5-408 (Supp. 89-2).

R18-5-409. Refuse disposal

A. The storage, collection, transportation and disposal of refuse and other objectionable wastes shall be governed by A.A.C. Title 18, Chapter 8, Article 5.

B. Where an approved community or private refuse collection service is available, arrangements shall be made to have this service furnished to the subdivision. A letter, from the community or private collection company, stating that the collection service will be made available to the subdivision, is required.

C. Where refuse collection service is not available, it will be the responsibility of the subdivider to notify each purchaser or tenant that the hauling of all refuse is an individual responsibility and that all refuse must be properly stored pending removal and disposed of at disposal areas specified in the plan approved by the Department.

D. Where a collection service or an existing approved disposal area is not available to the subdivision, a plan approval will not be granted unless a separate disposal area is provided by the subdivider or arrangements are made to utilize a new, conveniently located disposal area. Such arrangements shall include, but not be limited to, the written permission of the person responsible for the operation of the new site.

Historical Note
Former Section R9-8-1031 renumbered without change as Section R18-5-409 (Supp. 89-2).

R18-5-410. Condominiums

A. New water distribution lines and new wastewater drain lines which are to be used as a common element of a condominium and are not under the ownership and control of a public utility shall be constructed in accordance with applicable provisions of the Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D), including the minimum standards for construction contained therein.

B. Plans to be submitted shall include inside diameter, length and location of all proposed and existing common usage water distribution lines and inside diameter, length, slope and location of all proposed and existing common usage wastewater drain lines necessary to serve each and every unit. Plans and specifications should be submitted with sufficient detail to indicate compliance with subsection (A) above.

C. Appropriate sections of the covenants shall be submitted that indicate adequate provisions have been made for the maintenance of water distribution lines and wastewater drain lines in common usage.

D. Approval of existing housing to be converted to condominiums is conditioned upon the water distribution system and wastewater drainage system being:
1. Approved in writing at the time of original construction by the local building inspection authority, or
2. Currently operating under a permit issued by a local building inspection authority, or
3. Certified to be adequate by an Arizona registered professional engineer who has affixed his signature and seal to as-built plans submitted for approval.

Historical Note
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1032 renumbered without change as Section R18-5-410 (Supp. 89-2).

R18-5-411. Violations
Any person, firm, company or corporation who offers for sale, lease or rent any tract of land contrary to these regulations shall be prosecuted in accordance with A.R.S. § 49-142 or as otherwise may be provided by law.

Historical Note
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1036 renumbered without change as Section R18-5-411 (Supp. 89-2). Amended effective April 2, 1990 (Supp. 90-2).

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-501. Siting Requirements
To the extent practicable, a new public water system or an extension to an existing public water system shall be geographically located to avoid a site which is:

1. Subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or portion thereof; or
2. Within the flood plain of a 100-year flood, except for intake structures and properly protected wells.

Historical Note
Section recodified from R18-4-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-502. Minimum Design Criteria

A. A public water system shall be designed using good engineering practices. A public water system which is designed in a manner consistent with the criteria contained in Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems," issued by the Arizona Department of Health Services, May 1978 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State, shall be considered to have been designed using good engineering practices. Other system designs shall be approved if the applicant can demonstrate that the system will function properly and may be operated reliably in compliance with this Chapter. Minimum design criteria which are not subject to modification are listed in this Section.

B. A potable water distribution system shall be designed to maintain and shall maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow.

C. Water and sewer mains shall be separated in order to protect public water systems from possible contamination. All distances are measured perpendicularly from the outside of the sewer main to the outside of the water main. Separation requirements are as follows:

1. A water main shall not be placed:
   a. Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).
   b. Within 2 feet horizontally and 2 feet below the sewer main.
2. No water pipe shall pass through or come into contact with any part of a sewer manhole. The minimum horizontal separation between water mains and manholes shall be 6 feet, measured from the center of the manhole.
3. The minimum separation between force mains or pressure sewers and water mains shall be 2 feet vertically and 6 feet horizontally under all conditions. Where a sewer force main crosses above or less than 6 feet below a water line, the sewer main shall be encased in at least 6 inches of concrete or constructed using mechanical joint ductile iron pipe for 10 feet on either side of the water main.
4. The separation requirements do not apply to building, plumbing, or individual house service connections.
5. Sewer mains (gravity, pressure, and force) shall be kept a minimum of 50 feet from wells unless the following conditions are met:
   a. Water main pipe, pressure tested in place to 50 psi without excessive leakage, is used for gravity sewers at distances greater than 20 feet from water wells; or
   b. Water main pipe, pressure tested in place to 150 psi without excessive leakage, is used for pressure sewers and force mains at distances greater than 20 feet from water wells. "Excessive leakage" means any amount of leakage which is greater than that permitted under the AWWA Standard applicable to the particular pipe material or valve type.
6. Requests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis.

D. A public water system shall not construct or add to its system a well which is located:

1. Within 50 feet from existing sewers unless the sewer main has been constructed in accordance with subsection (C)(5)(a) or (b) of this Section;
2. Within 100 feet of any existing septic tank or subsurface disposal system;
3. Within 100 feet of a discharge or activity which is required to obtain an Individual Aquifer Protection Permit, pursuant to A.R.S. §§ 49-241(A) through 49-251;
4. Within 100 feet of an underground storage tank as defined in A.R.S. § 49-1001; or
5. Within 100 feet of hazardous waste facilities operated by large quantity generators and treatment, storage, and disposal facilities regulated under the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq.

Historical Note
Section recodified from R18-4-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-503. Storage Requirements

A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.

B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well.

Historical Note
Section recodified from R18-4-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-504. Prohibition on the Use of Lead Pipe, Solder, and Flux
Construction materials used in a public water system, including residential and non-residential facilities connected to the public water system, shall be lead-free as defined at R18-4-101. This Section shall not apply to leaded joints necessary for the repair of cast iron pipes.

Historical Note
Section recodified from R18-4-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-505. Approval to Construct
A. The Department shall only approve an addition or a water main extension to a public water system that is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department. The Department shall approve a properly designed modification that can be expected to return a public water system to compliance.
B. A person shall not start to construct a new public water system, modify an existing facility, including an extension to an existing public water system, or make an alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system before receiving an Approval to Construct from the Department. Designing or consulting engineers may confer with the Department before proceeding with detailed designs of complex or innovative facilities. The following provisions shall apply:
1. An application for Approval to Construct, including the following documents and data, shall be submitted to the Department:
   a. Detailed construction plans of the site and work to be done, presented in legible form and of sufficient scale, to establish construction requirements to facilitate effective review;
   b. Complete specifications to supplement the plans;
   c. A design report that describes the proposed construction and basis of design, provides design data and other pertinent information that defines the work to be done, and establishes the adequacy of the design to meet the system demand;
   d. Analyses of a proposed new source of water that include:
      i. Microbiological; physical; radiochemical; inorganic, organic, and volatile organic chemicals; and
      ii. Microscopic particulates if the source meets the criteria of R18-4-301.01(A); and
   e. Other pertinent data required to evaluate the application for Approval to Construct.
2. All plans, specifications, and design reports submitted for a public water system shall be prepared by, or under the supervision of, a professional engineer registered in Arizona and have the seal and signature of the engineer affixed to them, except that an engineer not registered in Arizona may design a water treatment plant or additions, modifications, revisions, or extensions, which include extensions to potable water distribution systems, if the total cost of the construction does not exceed $12,500 for material, equipment, and labor, as verified by a cost estimate submitted with plan documents.
3. An existing public water system shall be exempt from the plan review requirements of this Article if the public water system is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department if the applicable structural revision, addition, extension, or modification:
   a. Has a project cost of $12,500 or less; or
   b. Is made to a water line that:
      i. Is not for a subdivision requiring plat approval by a city, town, or county;
      ii. Has a project cost of more than $12,500 but less than $50,000; and
      iii. Has a design that is sealed and signed by a professional engineer registered in Arizona and the construction of which is reviewed for conformance with the design by a professional engineer registered in Arizona.
4. Upon completion of a project exempt from the plan review requirements of this Article pursuant to subsection (B)(3), the public water system shall submit a notice of compliance which contains:
   a. A fair market value cost estimate for the project,
   b. The name of the design engineer and the review engineer, and
   c. The project completion date and the total construction time.

C. The Department shall act upon a complete Approval to Construct application submitted for approval within 30 days after its receipt.
D. The Department shall issue an Approval to Construct only when the following conditions have been met:
1. Plans and specifications submitted to the Department demonstrate that the proposed public water system reasonably can be expected to comply with this Chapter, including the MCLs in Article 2; and
2. The water system is in compliance with this Chapter or reasonably can be expected to return to compliance with this Chapter as a result of the proposed construction.

E. An Approval to Construct becomes void if an extension of time is not granted by the Department within 90 days after the passage of one of the following:
1. Construction does not begin within one year after the date the Approval to Construct is issued, or
2. There is a halt in construction of more than one year, or
3. Construction is not completed within three years after the date construction begins.

Historical Note
Section recodified from R18-4-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-506. Compliance with Approved Plans
All construction shall conform to approved plans and specifications. In order to make a change in an approved design that will affect water quality, capacity, flow, sanitary features, or performance, a public water system shall submit revised plans and specifications to the Department for review, together with a written statement regarding the reasons for the change. The public water system shall not proceed with the construction affected by the design change without written approval from the Department. Revisions not affecting water quality, capacity, flow, sanitary features, or performance may be permitted during construction without further approval if record drawings documenting these changes, prepared by a professional engineer registered in Arizona, are submitted to the Department under R18-5-508.

Historical Note
Section recodified from R18-4-506 at 10 A.A.R. 585,

effective January 30, 2004 (Supp. 04-1).

R18-5-507. Approval of Construction

A. A person shall not operate a newly constructed facility until an Approval of Construction is issued by the Department.

B. The Department shall not issue an Approval of Construction on a newly constructed public water system, an extension to an existing public water system, or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or operational performance unless the following requirements have been met:

1. A professional engineer registered in Arizona or a person under the direct supervision of a professional engineer registered in Arizona, has completed a final inspection and submitted a Certificate of Completion on a form approved by the Department to which the seal and signature of the professional engineer registered in Arizona have been affixed;
2. The construction conforms to approved plans and specifications, as indicated in the Certificate of Completion, and all changes have been documented by the submission of record drawings under R18-5-508;
3. An operations and maintenance manual has been submitted and approved by the Department if construction includes a new water treatment facility; and
4. An operator, who is certified by the Department at a grade appropriate for each facility, is employed to operate each water treatment plant and the potable water distribution system.

C. The Department may conduct the final inspection required in subsection (B)(1), at a public water system's request, if both of the following notification requirements are met:

1. The public water system notifies the Department at least seven days before beginning construction on a public water system installation, change, or addition that is authorized by an Approval to Construct; and
2. The public water system notifies the Department of completion of construction at least 10 working days before the expected completion date.

Historical Note

Section recodified from R18-4-507 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-508. Record Drawings

A. A professional engineer registered in Arizona shall clearly and accurately record or mark, on a complete set of working project drawings, each deviation from the original plan and the dimensions of the deviation. The set of marked drawings becomes the record drawings, reflecting the project as actually built.

B. The professional engineer registered in Arizona shall sign, date, and place the engineer's seal on each sheet of the record drawings and submit them to the Department upon completion of the project. The record drawings shall be accompanied by an Engineer's Certificate of Completion, signed by the professional engineer registered in Arizona, and submitted on a form approved by the Department for any project inspected under R18-5-507(B).

C. Quality control testing results and calculations, including pressure and microbiological testing, and disinfectant residual records, shall be submitted with the Engineer's Certificate of Completion together with field notes and the name of the individual witnessing the tests.

Historical Note

Section recodified from R18-4-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-509. Modification to Existing Treatment Process

Before a public water system may make a modification to its existing treatment process, the public water system shall submit and obtain the Department's approval for a detailed plan that explains the proposed modifications and the safeguards that the public water system will implement to ensure that the quality of the water served by the system will not be adversely affected by the modification. The public water system shall comply with the provisions in the approved plans.

Historical Note

Section recodified from R18-4-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

D-8.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9

Amend: R18-9-101, R18-9-A213, R18-9-B201, R18-9-B205, R18-9-C301, R18-9-C302, R18-9-C304, R18-9-D302, R18-9-C620, R18-9-D635, R18-9-F645, R18-9-I650, R18-9-A701, R18-9-A902, R18-9-A904, R18-9-A907, R18-9-1001

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **Arizona Department of Environmental Quality (ADEQ)**
Title 18, Chapter 9

Amend: R18-9-101, R18-9-A213, R18-9-B201, R18-9-B205, R18-9-C301, R18-9-C302, R18-9-C304, R18-9-D302, R18-9-C620, R18-9-D635, R18-9-F645, R18-9-I650, R18-9-A701, R18-9-A902, R18-9-A904, R18-9-A907, R18-9-1001

Summary:

This expedited rulemaking from the Arizona Department of Environmental Quality (Department) seeks to amend seventeen (17) rules in Title 18, Chapter 9. The subject matter for Chapter 9 is Water Pollution Control. The Department is proposing to make amendments that will remove out of date statutory references, correct references to other Department rules, remove out of date references, and to correct typographical errors. This rulemaking also makes changes consistent with amendments proposed during the most recent 5 YRR. Of the 17 rules being amended, 8 are being amended for the purposes of correcting statutory references or references to other rules. Two rules are being amended to correct typos. The other 7 changes are intended to provide clarification to the rules, including replacing incorrect language related to the now repealed drywell registration with the new Class V injection well which was required as part of the Underground Injection Control Program.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this portion of the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons; but amends rules that are outdated, and clarifies language of rules without changing their effects.

Council staff believe the current rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(1), (3), and (6) in that the rulemaking amends or repeals rules made obsolete by statutory authority, corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect, and amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates no changes were made between the proposed and final rulemaking.

5. 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 has identified 40 CFR 124.10 as corresponding federal law applicable to R18-9-C620. Both the CFR and Department rule concern public notice of permit actions.

The Department has also identified 40 CFR 124.10 and 40 C.F.R. 123.25 as being applicable to R18-9-A902, R18-9-A904, and R18-9-A907. Both the CFR and Department rule concern permits, along with public notice of permit actions.

The Department has indicated that the proposed rules are not more stringent than any of the corresponding federal law.

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

Not applicable. The Department has indicated that no permit or license is required or issued as part of these rules.

7. 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 any study relevant to this rulemaking.

8. Conclusion

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend three rules in Title 18, Chapter 9 for the purpose of fulfilling objectives from a previous 5 YRR, to correct terminology and references to statutes and other rules, and to clarify language. The proposed amendments do not implement any substantive changes and make the rules more user friendly by adding references to other Department rules.

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

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

December 11, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 4, 5, 9, and 11 – "Water Quality Rule Corrections"

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for February 4, 2025.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)
   A. The public record closed for all rules on October 7, 2024 at midnight.
   B. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemakings, additionally, fulfill the requirements under A.R.S. § 41-1027(A)(3), "correct[ing] typographical errors…or clarifies language of a rule without changing its effect"; (A)(4), "adopt[ing] or incorporat[ing] by reference without material change federal statutes or regulations; (A)(6), "amend[ing] or repeal[ing] rules that are outdated, redundant or otherwise no longer necessary for the operation of state government"; and (A)(7), "implement[ing], without material change, a course of action that is proposed in a five-year review report approved by the council".
   C. The rulemaking activities relate to the following five-year review reports:
      1. 18 A.A.C. 4, Art. 1, 2, 3, 6, & 8 (submitted February 28, 2022, approved October 4, 2022);
      2. 18 A.A.C. Ch. 5, Art. 1, 2, 3, 4, & 5 (submitted August 27, 2021, approved November 2, 2021);

3. 18 A.A.C. Ch. 9, Art. 2 (submitted January 20, 2021, approved April 6, 2021), Art. 9 (submitted April 26, 2022, approved August 2, 2022) ;

D. 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.

E. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:

1. This cover letter.
2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 4, 5, Chapter 9, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. ADEQ did not receive any written comments on the NPERMs for Chapters 4, 5, 9, or 11.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
    a. Chapter 4:
        i. Authorizing statutes (general): A.R.S. §§ 49-104(B)(4), 49-353(A)(2)
        ii. Implementing statutes (specific): A.R.S. § 49-353.01
    b. Chapter 5:
        i. Authorizing statutes (general): A.R.S. § 49-104(B)(11)-(13)
        ii. Implementing statutes (specific): A.R.S. §§ 49-352, 49-353(A)(2), 49-353.01(A)(1), and 49-361
    c. Chapter 9:
        i. Authorizing statutes (general): A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), and 49-255.02
    d. Chapter 11:
        i. Authorizing statutes (general): A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

II. Additional items required by GRRC:

A. Exemption Memo Request.

B. Governor's Office initial written approval.
C. Governor's Office final written approval.

Thank you for your timely review and approval. Please contact Trevor Baggiore, Division Director, Water Quality Division, 602-771-2321 or baggiore.trevor@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024.

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

R18-9-101	Amend
R18-9-A213	Amend
R18-9-B201	Amend
R18-9-B205	Amend
R18-9-C301	Amend
R18-9-C302	Amend
R18-9-C304	Amend
R18-9-D302	Amend
R18-9-C620	Amend
R18-9-D635	Amend
R18-9-F645	Amend
R18-9-I650	Amend
R18-9-A701	Amend
R18-9-A902	Amend
R18-9-A904	Amend
R18-9-A907	Amend
R18-9-1001	Amend

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

Authorizing statute(s): A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11).

Implementing statute(s): A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), 49-255.02.

4. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State.

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 the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable.

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 the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable.

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

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-106.

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2795, Issue Date: September 6, 2024, Issue Number: 36, File number: R24-167.

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

Name: Katherine Silvestri

Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007

Telephone: (602) 809-4869

Fax: (602) 771-2366

Email: silvestri.katherine@azdeq.gov
Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

The objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 9, as well as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conduct an expedited rulemaking only if the rulemaking "does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]". The applicable requirements relied upon in this rulemaking include the following, which are individually assigned for each amendment (as shown in the section by section explanation below): (A)(1) "Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority'; (A)(3) "Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect"; and (A)(6) "Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government".

Section by Section Explanation of the Rules:

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 1. Aquifer Protection Permits - General Provisions
This rule provides definitions for Title 18, Chapter 9, Articles 1, 2, 3, and 4 in addition to those established in A.R.S. § 49-201.	101(21)	Update following repeal	This rule contains an outdated reference to A.R.S. § 49-331 which is repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ removes the statutory reference in the definition, and un-italicize the definition accordingly.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 2. Aquifer Protection Permits - Individual Permits
This rule contains the requirements for the suspension, revocation, denial, or termination of an Aquifer Protection Permit (APP) individual permit.	R18-9-A213(C)(1)	Correction	This rule contains an incorrect reference to R18-9-A209 in subsection (C)(1) when referencing ADEQ's issuance of a Permit Release Notice. The rule directs that the Director shall terminate an individual permit if the facility covered under the permit has closed and the Director has issued a Permit Release Notice. Currently the rule cites R18-9-A209(B)(3)(a)(ii) which discusses the elements of a site investigation plan under a closure plan. The reference for the Director's determination to send a Permit Release Notice is found, instead, at R18-9-A209(B)(4)(a)(ii). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ updates the rule with the correct reference to R18-9-A209(B)(4)(a)(ii).
This rule contains general considerations and prohibitions for sewage treatment facilities permitted under an Aquifer Protection Permit (APP) individual permit.	R18-9-B201(I)	Clarification	There are two amendments to this rule in subsection (I). First, ADEQ clarifies the rule language. This rule establishes setback requirements for new sewage treatment facilities or facilities undergoing a major modification. Currently the rule provides a setback table and prescribes setbacks to be measured from the treatment and disposal components within the facility. However, the rule does not clearly explain that the setbacks must be measured from the noise or odor-producing treatment and disposal components within the facility, despite this being the interpretation consistently applied by ADEQ and most reasonably applied when reading the rule as a whole and analyzing the corresponding setback table. The setback table, itself, details the required distance (in feet) of the setbacks depending on the proposed level of noise, odor, or

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 2. Aquifer Protection Permits - Individual Permits
			aesthetic controls, corresponding with the design flow of the sewage treatment facility. Clarifying that the setbacks are measured from the noise or odor-producing components will assist the public with understanding how to apply and follow the required setbacks to achieve the goal and intention of the subsection, which is to mitigate and control noise and odor from facilities. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ clarifies the rule by explicitly stating that setbacks are measured from the noise or odor-producing components of the facility. Next, ADEQ clarifies the setback table within subsection (I). Currently, the setback table, as described above, prescribes the required distance (in feet) of the setbacks depending on the proposed level of noise, odor, or aesthetic controls, corresponding with the design flow of the sewage treatment facility. The table would be better understood by the public if the setback distances were, instead, clarified as "minimum" distances. This proposal clarifies the rule in accordance with the original intention of the rule, itself, evidenced by the original setback table in Chapter VI, "Sewage Treatment Works Design Considerations", of Engineering Bulletin No. 11, published by ADHS in July 1978, upon which the setback table in R18-9-B201 was based (*see* 7 A.A.R. 294 (January 12, 2001)). There, the setback table is entitled "Minimum Setback vs. Treatment Plant Size" and the corresponding explanation of the table further explains that the distances are the required "minimum setback[s]". Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ clarifies the rule by updating the setback table to make clear the fact that the setbacks are minimum distances.
This rule contains treatment performance requirements for an existing sewage treatment facility permitted under an Aquifer Protection Permit (APP) individual permit.	R18-9-B205	Update	This rule contains an outdated reference to A.R.S. § 49-201(16) for the definition of "existing facility". The reference has since changed to A.R.S. § 49-201(18). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ updates the reference from A.R.S. § 49-201(16) to A.R.S. § 49-201(18).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 3. Aquifer Protection Permits - General Permits
This rule sets forth the requirements for a 2.01 Aquifer Protection Permit (APP) general permit for drywells that drain areas where hazardous substances are used, stored, loaded, or treated.	R18-9-C301(B) & (H)(2)(b)	Update following repeal	This rule requires an applicant for a 2.01 general permit to submit to the Department a Notice of Intent to discharge along with their "Department registration number" for the drywell. This refers to a state-based drywell registration program, previously authorized by A.R.S. Title 49 Article 8, which was repealed on September 24, 2022 in anticipation of ADEQ's impending primacy over the Underground Injection Control (UIC) program. The UIC program regulates drywells as a Class V underground injection well which must be inventoried pursuant to A.A.C. R18-9-I652. The reference to a "Department registration number" in this

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 3. Aquifer Protection Permits - General Permits
			rule is inconsistent with the requirement in R18-9-I652 to submit "inventory information" and is, furthermore, outdated following the repeal of Article 8. An applicant for a 2.01 general permit must demonstrate compliance with the UIC rules and related requirements. Removal of the outdated reference to "Department registration number" is necessary to retain functionality of the rule and increase public understanding of the requirements incumbent upon applicants for a 2.01 general permit. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ updates the language in the rule to include a reference to the "Class V injection well inventory".
This rule sets forth the requirements for a 2.02 Aquifer Protection Permit (APP) general permit for intermediate stockpiles at mining sites.	R18-9-C302(A)	Update	This rule contains an outdated reference to A.R.S. § 49-201(19) for the definition of "inert material". The reference has since changed to A.R.S. § 49-201(22). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ updates the reference from A.R.S. § 49-201(19) to A.R.S. § 49-201(22).
This rule sets forth the requirements for a 2.04 Aquifer Protection Permit (APP) general permit for drywells that drain areas at motor fuel dispensing facilities where motor fuels are used, stored, or loaded.	R18-9-C304(B) & (I)(2)(b)	Update following repeal	This rule requires an applicant for a 2.04 general permit to submit to the Department a Notice of Intent to discharge along with their "Department registration number" for the drywell. This refers to a state-based drywell registration program, previously authorized by A.R.S. Title 49 Article 8, which was repealed on September 24, 2022 in anticipation of ADEQ's impending primacy over the Underground Injection Control (UIC) program. The UIC program regulates drywells as a Class V underground injection well which must be inventoried pursuant to A.A.C. R18-9-I652. The reference to a "Department registration number" is inconsistent with the requirement in R18-9-I652 to submit "inventory information" and is, furthermore, outdated following the repeal of Article 8. An applicant for a 2.04 general permit must demonstrate compliance with the UIC rules and related requirements. Removal of the outdated reference to "Department registration number" is necessary to retain functionality of the rule and increase public understanding of the requirements incumbent upon applicants for a 2.04 general permit. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ updates the language in the rule to include a reference to the "Class V injection well inventory".
This rule sets forth the requirements for a 3.02 Aquifer Protection Permit (APP) general	R18-9-D302(A)(2)	Update	This rule contains an outdated reference to A.R.S. § 49-201(19) for the definition of "inert material." This has changed in statute to (22). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ updates the reference from A.R.S. § 49-201(19) to A.R.S. § 49-201(22).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 3. Aquifer Protection Permits - General Permits
permit for process water discharges from water treatment facilities.			

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 6. Underground Injection Control (UIC)
This rule outlines the public notice requirements for the UIC program	R18-9-C620(D)(1)(f)	Update	Subsection (D)(1) in the rule is not correctly scoped to encompass the federal UIC rules in 40 CFR 124.10(C)(1)(VIII) & (XI). Currently, the language states that the Director shall give public notice of UIC permit actions and public hearings, and shall deliver a copy of the public notice to certain entities. ADEQ is applying for primacy of the Safe Drinking Water Act - Underground Injection Control regulatory program (*see* A.R.S. §§ 49-203(A)(6), 49-257.01). One of the requirements is for ADEQ to have rules that are at least as stringent as the Federal analog. Therefore, the rule needs to be scoped to match the federal rules by clarifying that a copy of the notice shall be provided to state and local oil and gas regulatory agencies for Classes I and VI injection wells. Notably, the requirement in 40 CFR 124.10(C)(1)(XI) to notify the state Director of the Public Water Supply Supervision (PWSS) program is not necessary to add in the A.A.C. because the Director of the PWSS is the Director of ADEQ, and is therefore not separately notified of permit actions. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ amends the language in this subsection to align the public notice requirements with the federal UIC rules by scoping Class I wells into the public notice requirements.
This rule provides the general permit conditions applicable to all UIC permits	R18-9-D635(9)(d)	Correction	This rule contains a typographical error. The language in subsection (9)(d) provides that the permittee shall allow the Director to sample or monitor for the purposes of assuring permit compliance "or as otherwise authorized by this Article the SDWA…". The language should, instead, say "...by this Article or the SDWA…". Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ revises the language and adds the word "or".
This rule sets forth the information that must be considered by the Director in authorizing Class II wells under the UIC program.	R18-9-F645(B)(2)	Correction	This rule contains a typographical error. The language in subsection (B)(2) discusses the requirement for the Director to consider a map which may show pertinent surface features "if known or suspended". The language should, instead, say "suspected". Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ revises the language to "suspected".
This rule sets forth general	R18-9-I650(A)(4)(b)	Correction	This rule contains a typographical error to an incorrect citation. Subsection (A)(4)(b) cites a transfer fee rule in R18-14-111(3). The correct citation is, instead, R18-14-111(A)(3). Therefore, pursuant

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 6. Underground Injection Control (UIC)
requirements for Class V UIC wells			to its authority under A.R.S. § 41-1027(A)(3), ADEQ fixes the error by changing the reference to R18-14-111(A)(3).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 7. Use of Recycled Water
This rule provides definitions for Title 18, Chapter 9, Article 7 in addition to those established in A.R.S. § 49-201.	R18-9-A701(5)	Update	This rule contains an outdated reference to A.R.S. § 49-201(18) for the definition of "gray water". The reference has since changed to A.R.S. § 49-201(20). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ updates the reference from A.R.S. § 49-201(18) to A.R.S. § 49-201(20).
This rule provides definitions for Title 18, Chapter 9, Article 7 in addition to those established in A.R.S. § 49-201.	R18-9-A701(11)	Update	This rule contains an outdated reference to A.R.S. § 49-201(32) for the definition of "reclaimed water". The reference has since changed to A.R.S. § 49-201(41). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ updates the reference from A.R.S. § 49-201(32) to A.R.S. § 49-201(41).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 9. Arizona Pollutant Discharge Elimination System
This rule outlines the relevant sections of Arizona assuming regulatory authority over the Environmental Protection Agency's National Pollutant Discharge System (NPDES).	R18-9-A902 (A) & (F)	Clarification	This rule should be revised to exclude outdated criteria under the public notice requirements for NPDES permittees in Arizona. Currently, the rule requires ADEQ to provide notice to all Arizona NPDES permittees, through one or more newspapers, which shall contain certain requirements as detailed in the rule. ADEQ has primacy over the Environmental Protection Agency's (EPA) NPDES program, and is authorized to implement and regulate a state-based program, AZPDES. ADEQ received authorization from the EPA to administer the NPDES Program on December 5, 2002. Now that ADEQ has administered the AZPDES program for roughly twenty-two years, these sections under R18-9-A902 are no longer necessary or appropriate. By updating this rule such that the Department would not be required to publish the date of EPA's approval of the AZPDES program, as well as information related to state and federal laws related to the permitting program, the contents of the public notice will be clearer and concise, fostering more public awareness of the most relevant aspects of a permit at issue. ADEQ removes paragraphs (A) and (F) under this section pursuant to its authority under A.R.S. § 41-1027(A)(6) to update this rule.
This rule intends to clarify that the scope of AZPDES permits do not convey property rights or special privileges.	R18-9-A904(B)	Clarification	This rule would benefit from improving grammar of the language so as to make it clearer for AZPDES permittees. The purpose of this rule is to more clearly delineate that an authorization to discharge under the AZPDES program does not instill property rights in the permittee (e.g., property rights over surface water or specialized licenses/privileges beyond the scope of the AZPDES permit). While

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 9. Arizona Pollutant Discharge Elimination System
			the rule currently includes language to this effect, it would benefit from clarification to the grammar and the addition of the term "to the permittee" to further clarify to whom the prohibition applies. Therefore, ADEQ seeks to add clarifying language pursuant to its authority under A.R.S. § 41-1027(A)(3).
This rule outlines public notice requirements for Individual AZPDES permits.	R18-9-A907(A)(1) & (B)	Clarification	This rule outlines public notice requirements for AZPDES individual permits. Subsection (A)(1) of this rule addresses public notice requirements for Individual AZPDES Permits. Subsection (B) outlines requirements for General Permits. ADEQ seeks to add clarifying language pursuant to its authority under A.R.S. § 41-1027(A)(3) for Individual Permits to make it clear that the Department has authority to post public notice to its website in order to make the information more widely available online. Furthermore, this change comports with notice requirements of the National Pollutant Discharge Elimination System (NPDES) as set forth in the Code of Federal Regulations (CFR) under 40 C.F.R. 124.10. Additionally, in subsection (B), the rule prescribes notice requirements for General Permits. ADEQ updates the rule to add the option for ADEQ to post notice on the website, in addition to its requirement to post in the Arizona Administrative Register. This will allow the notice to reach potentially broader audiences and boost public engagement in the permitting process. Therefore, pursuant to its authority in A.R.S. § 41-1027(A)(3), ADEQ adds this notice option to the language of the rule.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 10. Arizona Pollutant Discharge Elimination System - Transportation and Use of Biosolids
This rule provides definitions for Title 18, Chapter 9, Article 10 in addition to those established in A.R.S. § 49-225 and R18-9-A901.	R18-9-1001(26)	Correction	This rule contains an incorrect reference to A.R.S. § 49-201(21) for the definition of "navigable waters." There are three issues with this rule: 1) A.R.S. § 49-201(21) defines "hazardous substance" and the reference is therefore incorrect; 2) There is no corresponding definition for "navigable waters" in the statute; and 3) The definition in the rule is not actually defining the term "navigable waters". The language in the rule more appropriately and accurately defines "WOTUS" which is defined in statute at A.R.S. § 49-201(53). ADE corrects and clarifies the rule by changing "navigable waters" to "WOTUS". Additionally, ADEQ updates the reference to the definition of WOTUS in A.R.S. § 49-201(53) Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ changes the definition to "WOTUS" and update the statutory reference accordingly.
This rule provides definitions for Title 18, Chapter 9, Article	R18-9-1001(29)	Update	This rule contains an outdated reference to A.R.S. § 49-201(26) for the definition of "person". The reference has since changed to A.R.S. § 49-201(33). Therefore, pursuant to its authority under A.R.S. § 41-

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 10. Arizona Pollutant Discharge Elimination System - Transportation and Use of Biosolids
10 in addition to those established in A.R.S. § 49-225 and R18-9-A901.			1027(A)(6), ADEQ updates the reference from A.R.S. § 49-201(26) to A.R.S. § 49-201(33).

8. 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.

9. 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.

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

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Agency did not receive any public comments on A.A.C. Title 18 Chapter 9.

13. 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:

Not applicable.

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:

40 CFR 124.10 is applicable to the subject of R18-9-C620.

Additionally, 40 C.F.R. 124.10 and 40 C.F.R. 123.25 are applicable to the subject of R18-9A902, R18-9-A904, and R18-9-A907.

However, these rules are not more stringent than federal law in accordance with A.R.S. § 49-104(A)(16).

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.

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

Not applicable.

15. 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.

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

Section

R18-9-101. Definitions

ARTICLE 2. AQUIFER PROTECTION PERMITS – INDIVIDUAL PERMITS

Section

R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

R18-9-B201. General Considerations and Prohibitions

R18-9-B205. Treatment Performance Requirements for an Existing Facility

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

Section

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

ARTICLE 6. UNDERGROUND INJECTION CONTROL

Section

R18-9-C620 Public Notice of Permit Actions and Public Comment Period

R18-9-D635 Conditions Applicable to All Permits

R18-9-F645 Class II; Information to be Considered by the Director

R18-9-I650 Class V; General Requirements

ARTICLE 7. USE OF RECYCLED WATER

Section

R18-9-A701 Definitions

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Section

R18-9-A902 AZPDES Permit Transition, Applicability, and Exclusions

R18-9-A904 Effect of a Permit

R18-9-A907 Public Notice

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Section

R18-9-1001 Definitions

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

1. "Aggregate" No change
2. "Alert level" No change
3. "AQL" No change
4. "Aquifer Protection Permit" No change
5. "Aquifer Water Quality Standard" No change
6. "AZPDES" No change
7. "BADCT" No change
8. "Bedroom" No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
9. "Book net worth" No change
10. "CCR" No change
11. "CCR landfill" No change
12. "CCR surface impoundment" No change
13. "CCR unit" No change
14. "Cesspool" No change
15. "Chamber technology" No change
16. "CMOM Plan" No change
17. "Design capacity" No change
18. "Design flow" No change
19. "Direct reuse site" No change
20. "Disposal works" No change
21. "Drywell" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended. A.R.S. § 49-331(3).
22. "Dwelling" No change
23. "Final permit determination" No change
24. "Gray water" No change
25. "Groundwater Quality Protection Permit" No change
26. "Homeowner's association" No change
27. "Injection well" No change.

28. “Intermediate stockpile” No change
29. “Land treatment facility” No change
30. “Mining site” No change
31. “Nitrogen Management Area” No change
32. “Notice of Disposal” No change
33. “On-site wastewater treatment facility” No change
34. “Operational life” No change
35. “Person” No change
36. “Pilot project” No change
37. “Process solution” No change
38. “Residential soil remediation level” No change
39. “Seasonal high water table” No change
40. “Setback” No change
41. “Sewage” No change
42. “Sewage collection system” No change
43. “Sewage treatment facility” No change
44. “Surface impoundment” No change
45. “Tracer” No change
46. “Tracer study” No change
47. “Treatment works” No change
48. “Typical sewage” No change
49. “Underground storage facility” No change
50. “Waters of the United States” No change
    a. No change
    b. No change
    c. No change
        i. No change
        ii. No change
        iii. No change
    d. No change
    e. No change
    f. No change
    g. No change

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

R18-9-A213. PERMIT SUSPENSION, REVOCATION, DENIAL, OR TERMINATION

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
    a. No change
    b. No change

B. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change
3. No change

C. The Director shall terminate an individual permit if each facility covered under the individual permit:

1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or ~~A209(B)(3)(a)(ii)~~ A209(B)(4)(a)(ii) for the closed facility, or
2. Is covered under another Aquifer Protection Permit.

R18-9-B201. GENERAL CONSIDERATIONS AND PROHIBITIONS

A. No change

B. No change

C. No change

D. No change

1. No change
2. No change
3. No change
4. No change

E. No change

F. No change

G. No change

H. No change

I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the noise or odor-producing treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in

subsection (I)(2).

	Minimum Setback Distance (feet)	
Sewage Treatment Facility Design Flow (gallons per day)	**No Noise, Odor, or Aesthetic Controls ~~(feet)~~**	**Full Noise, Odor, and Aesthetic Controls ~~(feet)~~**
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
   a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
   b. All odor-producing components of the sewage treatment facility are fully enclosed,
   c. Odor scrubbers or other odor-control devices are installed on all vents, and
   d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
   a. Allowed by local ordinance; or
   b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design of the sewage treatment facility, and the potential for noise and odor.

J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

R18-9-B205. TREATMENT PERFORMANCE REQUIREMENTS FOR AN EXISTING FACILITY

For a sewage treatment facility that is an existing facility defined in ~~A.R.S. § 49-201(16)~~ A.R.S. § 49-201(18), the BADCT shall conform with the following:

1. No change
2. No change
3. No change

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

R18-9-C301. 2.01 GENERAL PERMIT: DRYWELLS THAT DRAIN AREAS WHERE HAZARDOUS SUBSTANCES ARE USED, STORED, LOADED, OR TREATED

A. No change

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:

1. The ~~Department registration~~ Class V injection well inventory number for the drywell or documentation that ~~a drywell registration form~~ inventory information was submitted to the Department;
2. No change
    a. No change
    b. No change
        c. No change
        d. No change
3. No change
4. No change

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

D. No change

1. No change
2. No change
3. No change
4. No change
5. No change
    a. No change
    b. No change
    c. No change
    d. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
        v. No change
    e. No change
6. No change
    a. No change
    b. No change
    c. No change
    d. No change

E. No change

1. No change
2. No change

F. No change

1. No change
2. No change
3. No change
4. No change
    a. No change
    b. No change
    c. No change
    d. No change
5. No change
6. No change

G. No change

1. No change
    a. No change
    b. No change
    c. No change
    d. No change
        i. No change
        ii. No change
2. No change

H. Closure and decommissioning requirements.

1. A permittee shall:
    a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
    b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
    c. Remove the settling chamber;
    d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
    e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
    a. The reason for the closure;

b. The ~~drywell registration~~Class V injection well inventory number;

c. The general permit reference number;

d. The materials and methods used to close the drywell;

e. The name of the contractor who performed the closure;

f. The completion date;

g. Any sampling data;

h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and

i. Any other information necessary to verify that closure has been achieved.

R18-9-C302. 2.02 GENERAL PERMIT: INTERMEDIATE STOCKPILES AT MINING SITES

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under ~~A.R.S. §49-201(19)~~ A.R.S. §49-201(22) at a mining site.

B. No change

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change

D. No change

1. No change
2. No change

R18-9-C304. 2.04 GENERAL PERMIT: DRYWELLS THAT DRAIN AREAS AT MOTOR FUEL DISPENSING FACILITIES WHERE MOTOR FUELS ARE USED, STORED, OR LOADED

A. No change

1. No change
2. No change
3. No change

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:

1. The ~~Department registration~~Class V injection well inventory number for the drywell or documentation that ~~a drywell registration form~~inventory information was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
   a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled

within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or

d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.

3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
   g. No change
   h. No change
   i. No change

D. No change

1. No change
   a. No change
   b. No change
      i. No change
      ii. No change
   c. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
2. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
   b. No change
      i. No change
      ii. No change
   c. No change
      i. No change

ii. No change

d. No change

i. No change

ii. No change

E. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change

F. No change

1. No change
2. No change

G. No change

1. No change
2. No change
3. No change
4. No change
   a. No change
   b. No change
   c. No change
   d. No change
5. No change
6. No change

H. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
2. No change

I. Closure and decommissioning requirements.

1. A permittee shall:
    a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
    b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
    c. Remove the settling chamber;
    d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
    e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
    a. The reason for the closure;
    b. The ~~drywell registration~~ Class V injection well inventory number or;
    c. The general permit reference number;
    d. The materials and methods used to close the drywell;
    e. The name of the contractor who performed the closure;
    f. The completion date;
    g. Any sampling data;
    h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
    i. Any other information necessary to verify that closure has been achieved.

R18-9-D302. 3.02 GENERAL PERMIT: PROCESS WATER DISCHARGES FROM WATER TREATMENT FACILITIES

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:

1. Liquid fraction. The discharge meets:
    a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
    b. The discharge meets one of the following criteria for microbiological contaminants:
        i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of E. coli bacteria is not more than 1/ 100 ml, or
        ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of E. coli bacteria is less than 126/ 100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and
2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in ~~A.R.S. § 49-201(19)~~ A.R.S. § 49-201(22).

B. No change

1. No change
2. No change

C. No change

1. No change
2. No change
3. No change
4. No change

a. No change
b. No change
c. No change

5. No change

D. No change

1. No change

a. No change
b. No change
c. No change

2. No change

a. No change
b. No change
c. No change

E. No change

1. No change
2. No change
3. No change
4. No change
5. No change

F. No change

1. No change
2. No change

ARTICLE 6. UNDERGROUND INJECTION CONTROL

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C620. PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

A. No change

1. No change
2. No change

B. No change

C. No change

1. No change
2. No change

D. Public notice of activities described in subsection (A) shall be given by the following methods:

1. Delivery of a copy of the notice to:
   a. The applicant;
   b. Any affected federal, state, tribal, or local agency, or council of government;
   c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
   d. Any person who requested, in writing, notification of the activity;
   e. Any persons on a contact list developed from past permit proceedings and public outreach; and
   f. ~~For Class VI injection well UIC permits, mailing or e-mailing a notice to~~ State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State <u>for Classes I and VI injection well UIC permits</u>.
2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. CONDITIONS APPLICABLE TO ALL PERMITS

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
   a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
   b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
   c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
   d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article <u>or</u> the SDWA, any substances or parameters at any location.
10. No change
    a. No change
    b. No change
       i. No change

ii. No change

c. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change

d. No change

11. No change

12. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

i. No change

ii. No change

g. No change

h. No change

13. No change

a. No change

b. No change

i. No change

ii. No change

14. No change

15. No change

16. No change

a. No change

b. No change

17. No change

a. No change

b. No change

c. No change

PART F. CLASS II INJECTION WELL REQUIREMENTS

R18-9-F645. CLASS II; INFORMATION TO BE CONSIDERED BY THE DIRECTOR

A. No change

B. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:

1. Information required in R18-9-C616.
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or ~~suspended~~ suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.
3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.
4. Proposed operating data:
    a. Average and maximum daily rate and volume of fluids to be injected;
    b. Average and maximum injection pressure; and
    c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.
5. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth.
6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.
7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.
9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change

D. No change

1. No change
2. No change

3. No change

4. No change

5. No change

6. No change

E. No change

1. No change

2. No change

3. No change

4. No change

5. No change

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. CLASS V; GENERAL REQUIREMENTS

A. The following requirements apply to Class V Wells authorized by rule:

1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
   a. Upon the effective date of an applicable permit denial;
   b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9- C616;
   c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.
4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
   a. An inventory, and
   b. Class V authorized by rule transfer fee pursuant to ~~R18-14-111(3)~~ R18-14-111(A)(3).

B. No change

1. No change
2. No change
   a. No change
   b. No change
      i. No change
      ii. No change
   c. No change
3. No change
4. No change

ARTICLE 7. USE OF RECYCLED WATER

R18-9-A701. DEFINITIONS

1. “Advanced reclaimed water treatment facility” No change

2. "Direct reuse" No change
    a. No change
    b. No change
    c. No change
    d. No change
3. "Direct reuse site" No change
4. "End user" No change
5. "Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet. ~~A.R.S. § 49-201(18)~~ A.R.S. § 49-201(20).
6. "Industrial wastewater" No change
7. "Irrigation" No change
8. "Open access" No change
9. "Open water conveyance" No change
10. "Pipeline conveyance" No change
11. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility. ~~A.R.S. § 49-201(32)~~ A.R.S. § 49-201(41).
12. "Reclaimed water agent" No change
13. "Reclaimed water blending facility" No change
14. "Recycled water" No change
15. "Restricted access" No change
16. "Sewage Treatment Facility" No change

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

R18-9-A902. AZPDES PERMIT TRANSITION, APPLICABILITY, AND EXCLUSIONS

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.

1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
    ~~a. The effective date of EPA approval of the AZPDES program;~~
    ~~b.~~a. The name and address of the Department;
    ~~c.~~b. The name of each individual permitted facility and its permit number;
    ~~d.~~c. The title of each general permit administered by the Department;
    ~~e.~~d. The name and address of the contact person, to which the permittee will submit notification and monitoring reports; and
    ~~f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and~~
    ~~g.~~e. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.

2. The Department shall provide the following entities with a copy of the notice:
    a. Each county department of health, environmental services, or comparable department;
    b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
    c. Any person who requested, in writing, notification of the activity;
    d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
    e. The United States Section of the International Boundary and Water Commission.
3. If a timely application for a NPDES permit was ~~is~~ submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
4. The terms and conditions under which the permit was issued remain the same until the permit is modified.

B. No change

1. No change
2. No change
3. No change
    a. No change
        i. No change
        ii. No change
        iii No change
        iv No change
    b. No change
4. No change
5. No change
6. No change
7. No change
8. No change
    a. No change
    b. No change
    c. No change
        i. No change
        ii. No change
        iii. No change
    d. No change

C. No change

1. No change
2. No change

D. No change

1. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
        v. No change
        vi. No change
        vii. No change
    b. No change
2. No change
3. No change

E. No change

F. No change

1. No change
    a. No change
    b. No change
2. No change

G. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

H. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change

R18-9-A904. EFFECT OF A PERMIT

A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.

B. The issuance of a permit does not convey any property rights ~~of any sort,~~ or ~~any~~ exclusive privilege to the permittee.

C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

R18-9-A907. PUBLIC NOTICE REQUIREMENTS

A. Individual permits.

1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied~~,~~ and may publish all notices of these activities in one or more newspapers of general circulation where the facility is located, or to the Department's website. If the Department publishes notice of a draft individual permit on the website, it shall additionally post on the website the draft permit and fact sheet for the duration of the public comment period. The notice shall contain:
    a. The name and address of the Department;
    b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
    c. A brief description of the business conducted at the facility or activity described in the permit application;
    d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
    e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
    f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
    g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
    h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
    i. Any additional information considered necessary to the permit decision.
2. No change
3. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9- C901, the Director shall publish a general notice of the draft permit in the Director shall publish a notice that a draft individual permit has been

prepared, or a permit application has been tentatively denied~~,~~ and may publish all notices of these activities in one or more newspapers of general circulation where the facility is located, or to the Department's website. If the Department publishes notice of a draft individual permit on the website, it shall additionally post on the website the draft permit and fact sheet for the duration of the public comment period. The notice shall contain:

1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. DEFINITIONS

1. "Aerobic digestion" No change
2. "Agronomic rate" No change
    a. No change
    b. No change
3. "Anaerobic digestion" No change
4. "Annual biosolids application rate" No change
5. "Annual pollutant loading rate" No change
6. "Applicator" No change
7. "Biosolids" No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change
8. "Bulk biosolids" No change
9. "Class I sludge management facility" No change
10. "Clean water act" No change
11. "Coarse fragments" No change
12. "Coarse or medium sands" No change
13. "Cumulative pollutant loading rate" No change
14. "Domestic septage" No change

15. “Domestic sewage” No change
16. “Dry-weight basis” No change
17. “Exceptional quality biosolids” No change
18. “Feed crops” No change
19. “Fiber crops” No change
20. “Food crops” No change
21. “Gravel” No change
22. “Industrial wastewater” No change
23. “Land application,” “apply biosolids,” or “biosolids applied to the land” No change
24. “Monthly average” No change
25. “Municipality” No change
26. *~~“Navigable waters”~~ “WOTUS” means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)). ~~A.R.S. § 49- 201(21)~~ A.R.S. § 49- 201(53).*
27. “Other container” No change
28. “Pathogen” No change
29. *“Person” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity. ~~A.R.S. § 49-201(26)~~ A.R.S. § 49-201(33).*
30. “Person who prepares biosolids” No change
31. “pH” No change
32. “Pollutant” No change
33. “Pollutant limit” No change
34. “Privately owned treatment works” No change
35. “Public contact site” No change
36. “Reclamation” No change
37. “Responsible official” No change
38. “Runoff” No change
39. “Sand” No change
40. “Sewage sludge” No change
    a. No change
    b. No change
    c. No change
41. “Sewage sludge unit” No change
42. “Specific oxygen uptake rate (SOUR)” No change
43. “Store biosolids” or “storage of biosolids” No change
44. “Surface disposal site” No change

45. “Ton” No change
46. “Total solids” No change
47. “Treatment of biosolids” No change
48. “Unstabilized solids” No change
49. “Vectors” No change
50. “Volatile solids” No change
51. “Wetlands” No change

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ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

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 October 1, 2023 through December 31, 2023

Questions about these rules? Contact:
Name: Chris Montague-Breakwell
Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4162
Email: montague-breakwell.chris@azdeq.gov

The release of this Chapter in Supp. 23-4 replaces Supp. 23-2, 1-180 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. 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 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, 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.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

Authority: A.R.S. §§ 49-203(A)(2), 49-203(A)(6), 49-203(A)(9), 49-104(C)(1)

Supp. 23-4

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Article 5, consisting of Section R18-9-501, made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. UNDERGROUND INJECTION CONTROL

Article 6, consisting of Parts A through J, and Table 1, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

Article 6, consisting of Sections R18-9-601 through R18-9-603, repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

Article 6, consisting of Sections R18-9-601 through R18-9-603, adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

PART A. GENERAL PROVISIONS

Article 6, Part A, consisting of Sections R18-9-A601 through R18-9-A606, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART B. GENERAL PROGRAM REQUIREMENTS

Article 6, Part B, consisting of Sections R18-9-B607 through R18-9-B615, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

Article 6, Part C, consisting of Sections R18-9-C616 through R18-9-C634, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

Article 6, Part D, consisting of Sections R18-9-D635 through R18-9-D639, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART E. CLASS I INJECTION WELL REQUIREMENTS

Article 6, Part E, consisting of Sections R18-9-E640 through R18-9-E642, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART F. CLASS II INJECTION WELL REQUIREMENTS

Article 6, Part F, consisting of Sections R18-9-F643 through R18-9-F645, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART G. CLASS III INJECTION WELL REQUIREMENTS

Article 6, Part F, consisting of Sections R18-9-G646 through R18-9-G648, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART H. CLASS IV INJECTION WELL REQUIREMENTS

Article 6, Part H, consisting of Section R18-9-H649, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART I. CLASS V INJECTION WELL REQUIREMENTS

Article 6, Part I, consisting of Sections R18-9-I650 through R18-9-I655, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART J. CLASS VI INJECTION WELL REQUIREMENTS

Article 6, Part J, consisting of Sections R18-9-J656 through R18-9-J670, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 7. USE OF RECYCLED WATER

Article 4, consisting of Sections R9-20-401 through R9-20-40,7 renumbered as Article 7, Sections R18-9-701 through R18-9-707 (Supp. 87-3).

Article 4, consisting of Sections R9-20-401 through R9-20-407, adopted effective May 24, 1985.

Former Article 4, consisting of Sections R9-20-401 through R9-20-408, repealed effective May 24, 1985.

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ARTICLE 8. REPEALED

Article 8, consisting of Sections R18-9-801 through R18-9-819, repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

Article 3, consisting of Sections R9-8-311 through R9-8-361, renumbered as Article 8, Sections R18-9-801 through R18-9-819 (Supp. 87-3).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS

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ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Article 10, consisting of Sections R18-9-1001 through R18-9-1014 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

In addition to the definitions established in A.R.S. § 49-201, the following terms apply to Articles 1, 2, 3, and 4 of this Chapter:

1. "Aggregate" means a clean graded hard rock, volcanic rock, or gravel of uniform size, between 3/4 inch and 2 1/2 inches in diameter, offering 30 percent or more void space, washed or prepared to be free of fine materials that will impair absorption surface performance, and has a hardness value of three or greater on the Moh's Scale of Hardness (can scratch a copper penny).
2. "Alert level" means a value or criterion established in an individual permit that serves as an early warning indicating a potential violation of a permit condition related to BADCT or the discharge of a pollutant to groundwater.
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, represents the ambient water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual permit or a general permit issued under A.R.S. §§ 49-203, 49-241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" means a standard established under A.R.S. §§ 49-221 and 49-223.
6. "AZPDES" means the Arizona Pollutant Discharge Elimination System, which is the state program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under A.R.S. Title 49, Chapter 2, Article 3.1 and 18 A.A.C. 9, Articles 9 and 10.
7. "BADCT" means the best available demonstrated control technology, process, operating method, or other alternative to achieve the greatest degree of discharge reduction determined for a facility by the Director under A.R.S. § 49-243.
8. "Bedroom" means, for the purpose of determining design flow for an on-site wastewater treatment facility for a dwelling, any room that has:
   a. A floor space of at least 70 square feet in area, excluding closets;
   b A ceiling height of at least 7 feet;
   c. Electrical service and ventilation;
   d. A closet or an area where a closet could be constructed;
   e. At least one window capable of being opened and used for emergency egress; and
   f. A method of entry and exit to the room that allows the room to be considered distinct from other rooms in the dwelling and to afford a level of privacy customarily expected for such a room.
9. "Book net worth" means the net difference between total assets and total liabilities.
10. "CCR" means coal combustion residuals which include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.
11. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a municipal solid waste landfill, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. A CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of beneficial use of CCR.
12. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.
13. "CCR unit" means any CCR landfill which receives CCR, any CCR surface impoundment designed to hold an accumulation of CCR and liquids, and the unit treats, stores or disposes of CCR. CCR unit includes a lateral expansion of a CCR unit, or a combination of more than one of these units that receives CCR.
14. "Cesspool" means a pit, collection structure, or subsurface fluid distribution system, which may or may not be partially lined, that receives discharged sewage. A cesspool is not an on-site wastewater treatment facility, such as a septic tank, vault, or other structure permitted under Article 3 of this Chapter.
15. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.
16. "CMOM Plan" means a Capacity, Management, Operations, and Maintenance Plan, which is a written plan that describes the activities a permittee will engage in and actions a permittee will take to ensure that the capacity of the sewage collection system, when unobstructed, is sufficient to convey the peak wet weather flow through each reach of sewer, and provides for the management, operation, and maintenance of the permittee's sewage collection system.
17. "Design capacity" means the volume of a containment feature at a discharging facility that accommodates all permitted flows and meets all Aquifer Protection Permit conditions, including allowances for appropriate peaking and safety factors to ensure sustained, reliable operation.
18. "Design flow" means the daily flow rate a facility is designed to accommodate on a sustained basis while satisfying all Aquifer Protection Permit discharge limitations and treatment and operational requirements. The design flow either incorporates or is used with appropriate peaking and safety factors to ensure sustained, reliable operation.
19. "Direct reuse site" means an area where reclaimed water is applied or impounded.
20. "Disposal works" means the system for disposing treated wastewater generated by the treatment works of a sewage treatment facility or on-site wastewater treatment facility, by surface or subsurface methods. Disposal works do not include systems for activities regulated under 18 A.A.C. 9, Article 7.
21. "*Drywell*" *means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the*

Federal Underground Injection Control Program (P.L. 93-523, part C), as amended. A.R.S. § 49-331(3)

22. "Dwelling" means any building, structure, or improvement intended for residential use or related activity, including a house, an apartment unit, a condominium unit, a townhouse, or a mobile or manufactured home that has been constructed or will be constructed on real property.
23. "Final permit determination" means a written notification to the applicant of the Director's final decision whether to issue or deny an Individual Aquifer Protection Permit.
24. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.* A.R.S. § 49-201(20).
25. "Groundwater Quality Protection Permit" means a permit issued by the Arizona Department of Health Services or the Department before September 27, 1989 that regulates the discharge of pollutants that may affect groundwater.
26. "Homeowner's association" means a nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
27. "Injection well" means a well that receives a discharge through pressure injection or gravity flow.
28. "Intermediate stockpile" means in-process material not intended for long-term storage that is in transit from one process to another at a mining site. Intermediate stockpile does not include metallic ore concentrate stockpiles or feedstocks not originating at the mining site.
29. "Land treatment facility" means an operation designed to treat and improve the quality of waste, wastewater, or both, by placement wholly or in part on the land surface to perform part or all of the treatment. A land treatment facility includes a facility that performs biosolids drying, processing, or composting, but not land application performed in compliance with 18 A.A.C. 9, Article 10.
30. "Mining site" means a site assigned one or more of the following primary Standard Industrial Classification Codes: 10, 12, 14, 32, and 33, and includes noncontiguous properties owned or operated by the same person and connected by a right-of-way controlled by that person to which the public is not allowed access.
31. "Nitrogen Management Area" means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.
32. "Notice of Disposal" means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.
33. *"On-site wastewater treatment facility" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.* A.R.S. § 49-201(29). An on-site wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.
34. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.
35. "*Person*" *means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.* A.R.S. § 49-201(33). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.
36. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.
37. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.
38. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.
39. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.
40. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.
41. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in A.R.S. § 49-201(20), if the gray water is reused according to 18 A.A.C. 9, Article 7.
42. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.
43. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.
44. "Surface impoundment" means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.
45. "Tracer" means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.

46. "Tracer study" means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.
47. "Treatment works" means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.
48. "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD_5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l.
49. "*Underground storage facility*" *means a constructed underground storage facility or a managed underground storage facility.* A.R.S. § 45-802.01(21).
50. "Waters of the United States" means:
    a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
    b. All interstate waters, including interstate wetlands;
    c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:
        i. That are or could be used by interstate or foreign travelers for recreational or other purposes;
        ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
        iii. That are used or could be used for industrial purposes by industries in interstate commerce;
    d. All impoundments of waters defined as waters of the United States under this definition;
    e. Tributaries of waters identified in subsections (a) through (d);
    f. The territorial sea; and
    g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final expedited rulemaking at 25 A.A.R. 3060, effective immediately September 23, 2019, pursuant to A.R.S. § 41-1027(H) (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply
Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-103. Class Exemptions
Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10;
5. CCR Units regulated by 40 CFR 257, Subpart D or by a permit in effect under a Department program approved by the United States Environmental Protection Agency in accordance with 42 U.S.C. § 6945(d)(1);
6. Underground Injection Control Class V injection wells regulated under an area or individual permit per 18 A.A.C. 9, Article 6, Part I.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Subsection 4 citation corrected to reflect recodification at 7 A.A.R. 2522 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final expedited rulemaking at 25 A.A.R. 3060, effective immediately September 23, 2019, pursuant to A.R.S. § 41-1027(H) (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-104. Transition from Notices of Disposal and Groundwater Quality Protection Permitted Facilities
A person who owns, operates, or operated a facility on or after January 1, 1986 for which a Notice of Disposal was filed or a Groundwater Quality Protection Permit was issued shall, within 90 days from the date on the Director's notification, submit an application for an Aquifer Protection Permit or a closure plan as specified under A.R.S. § 49-252. The person shall obtain a permit for continued operation, closure of the facility, or clean closure approval.

Failure to submit an application or closure plan as required terminates continuance of the Notice of Disposal or Groundwater Quality Protection Permit.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-105. Permit Continuance

A. Continuance.
1. Groundwater Quality Protection Permits.
   a. Subject to R18-9-104 and other provisions of this Section, a Groundwater Quality Protection Permit issued before September 27, 1989 is valid according to the terms of the permit until replaced by an Aquifer Protection Permit issued by the Department.
   b. A person who owns or operates a facility to which a Groundwater Quality Protection Permit was issued is in compliance with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3, if the facility:
      i. Meets the conditions of the Groundwater Quality Protection Permit; and
      ii. Is not causing or contributing to the violation of any Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
2. Notice of Disposal. A person who owns or operates a facility for which a Notice of Disposal was filed before September 27, 1989 complies with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3 if the facility is not causing or contributing to the violation of an Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
3. Aquifer Protection Permit application submittal. A person who did not file a Notice of Disposal and does not possess a Groundwater Quality Protection Permit or an Aquifer Protection Permit for an existing facility, but submitted the information required in applicable rules before December 27, 1989, is in compliance with Articles 1, 2, and 3 of this Chapter only if the person submitted an Aquifer Protection Permit application to the Department before January 1, 2001.

B. Applicability. Subsection (A) applies until the Director:
1. Issues an Aquifer Protection Permit for the facility,
2. Denies an Aquifer Protection Permit for the facility,
3. Issues a letter of clean closure approval for the facility under A.R.S. § 49-252, or
4. Determines that the person failed to submit an application under R18-9-104.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended effective November 12, 1996 (Supp. 96-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-106. Determination of Applicability

A. A person who engages or who intends to engage in an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of this Chapter may submit a request, on a form provided by the Department, that the Department determine the applicability of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter to the operation or activity.

B. A person requesting a determination of applicability shall provide the following information and the applicable fee under 18 A.A.C. 14:
1. The name and location of the operation or activity;
2. The name of any person who is engaging or who proposes to engage in the operation or activity;
3. A description of the operation or activity;
4. A description of the volume, chemical composition, and characteristics of materials stored, handled, used, or disposed of in the operation or activity; and
5. Any other information required by the Director to make the determination of applicability.

C. Within 45 days after receipt of a request for a determination of applicability, the Director shall notify in writing the person making the request that the operation or activity:
1. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or facility does not discharge as described under A.R.S. § 49-241;
2. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or activity is exempted by A.R.S. § 49-250 or R18-9-103;
3. Is eligible for a general permit under A.R.S. §§ 49-245.01, 49-245.02 or 49-247 or Article 3 of this Chapter, specifying the particular general permit that would apply if the person meets the conditions of the permit; or
4. Is subject to the permit requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter.

D. If, after issuing a determination of applicability under this Section, the Director concludes that the determination or the information relied upon for a determination is inaccurate, the Director may modify or withdraw its determination upon written notice to the person who requested the determination of applicability.

E. If the Director determines that an operation or activity is subject to the requirements of A.R.S. §§ 49-241 through 49-252, the person who owns or operates the discharging facility shall, within 90 days from receiving the Director's written notification, submit an application for an Aquifer Protection Permit or a closure plan.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-107. Consolidation of Aquifer Protection Permits

A. The Director may consolidate any number of individual permits or the coverage for any facility authorized to discharge under a general permit into a single individual permit, if:
1. The facilities are part of the same project or operation and are located in a contiguous geographic area, or
2. The facilities are part of an area under the jurisdiction of a single political subdivision.

B. All applicable individual permit requirements established in Articles 1 and 2 of this Chapter apply to the consolidation of Aquifer Protection Permits.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-108. Public Notice

A. Individual permits.

1. The Department shall provide the entities specified in subsection (A)(2), with monthly written notification, by regular mail or electronically, of the following:
   a. Individual permit applications,
   b. Temporary permit applications,
   c. Preliminary and final decisions by the Director whether to issue or deny an individual or temporary permit,
   d. Closure plans received under R18-9-A209(B),
   e. Significant permit amendments and "other" permit amendments,
   f. Permit revocations, and
   g. Clean closure approvals.
2. Entities.
   a. Each county department of health, environmental services department, or comparable department;
   b. A federal, state, local agency, or council of government, that may be affected by the permit action; and
   c. A person who requested, in writing, notification of the activities described in subsection (A).
3. The Department may post the information referenced in subsections (A)(1) and (2) on the Department web site: www.azdeq.gov.

B. General permits. Public notice requirements do not apply.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-109. Public Participation

A. Notice of Preliminary Decision.

1. The Department shall publish a Notice of Preliminary Decision regarding the issuance or denial of a significant permit amendment or a final permit determination in one or more newspapers of general circulation where the facility is located.
2. The Department shall accept written comments from the public before a significant permit amendment or a final permit determination is made.
3. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.

B. Public hearing.

1. The Department shall provide notice and conduct a public hearing to address a Notice of Preliminary Decision regarding a significant permit amendment or final permit determination if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information has been brought to the attention of the Department that has not been considered previously in the permitting process.
2. If, after publication of the Notice of Preliminary Decision, the Department determines that a public hearing is necessary, the Department shall schedule a public hearing and publish the Notice of Preliminary Decision at least once, in one or more newspapers of general circulation where the facility is located.
3. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

C. The Department shall respond in writing to all comments submitted during the formal public comment period.

D. At the same time the Department notifies a permittee of a significant permit amendment or an applicant of the final permit determination, the Department shall send, through regular mail or electronically, a notice of the amendment or determination and the summary of response to comments to any person who submitted comments or attended a public hearing on the significant permit amendment or final permit determination.

E. General permits. Public participation requirements do not apply.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-110. Inspections, Violations, and Enforcement

A. The Department shall conduct an inspection of a permitted facility as specified under A.R.S. § 41-1009.

B. A person who owns or operates a facility contrary to a provision of Articles 1, 2, and 3 of this Chapter, violates a condition of an Aquifer Protection Permit, or violates a condition of a Groundwater Quality Protection Permit continued under R189105(A)(1) is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-111. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-112. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-113. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-114. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-115. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-116. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-117. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-118. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-119. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-120. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective July 14, 1998 (Supp. 98-3).

R18-9-121. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-122. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-123. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 15, 1996 (Supp. 96-4).

R18-9-124. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-125. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-126. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-127. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-128. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 12, 1996 (Supp. 96-4).

R18-9-129. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-130. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

Appendix I. Repealed

Historical Note
Appendix I repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A201. Individual Permit Application

A. An individual permit application covers one or more of the following categories:
1. Drywell,
2. Industrial,
3. Mining,
4. Wastewater,
5. Solid waste disposal, or
6. Land treatment facility.

B. An applicant for an individual permit shall provide the Department with:
1. The following information on an application form:
   a. The name and mailing address of the applicant;
   b. The name and mailing address of the owner of the facility;
   c. The name and mailing address of the operator of the facility;
   d. The legal description, including latitude and longitude, of the location of the facility;
   e. The expected operational life of the facility; and

f. The permit number for any other federal or state environmental permit issued to the applicant for that facility or site.

2. A copy of the certificate of disclosure required by A.R.S. § 49-109;
3. Evidence that the facility complies with applicable municipal or county zoning ordinances, codes, and regulations;
4. Two copies of the technical information required in R18-9-A202(A);
5. Cost estimates for facility construction, operation, maintenance, closure, and post-closure as follows.
   a. The applicant shall ensure that the cost estimates are derived by an engineer, controller, or accountant using competitive bids, construction plan take-off's, specifications, operating history for similar facilities, or other appropriate sources, as applicable.
   b. The following cost estimates that are representative of regional fair market costs:
      i. The cost of closure estimate under R18-9-A209(B)(2), consistent with the closure plan or strategy submitted under R18-9-A202(A)(10);
      ii. The estimated cost of post-closure monitoring and maintenance under R18-9-A209(C), consistent with the post-closure plan or strategy submitted under R18-9-A202(A)(10); and
      iii. For a sewage treatment facility or utility subject to Title 40 of the Arizona Revised Statutes, the operation and maintenance costs of those elements of the facility used to make the demonstration under A.R.S. § 49-243(B);
6. For a sewage treatment facility:
   a. Documentation that the sewage treatment facility or expansion conforms with the Certified Areawide Water Quality Management Plan and the Facility Plan, and
   b. The additional information required in R18-9-B202 and R18-9-B203;
7. Certification in writing that the information submitted in the application is true and accurate to the best of the applicant's knowledge; and
8. The applicable fee established in 18 A.A.C. 14.

C. Special provision for an underground storage facility as defined in A.R.S. § 45-802.01(21). A person applying for an individual permit for an underground storage facility shall submit the information described in R18-9-A201 through R18-9-A203, except for the BADCT information specified in R18-9-A202(A)(5).
1. Upon receipt of the application, the Department shall process the application in coordination with the underground storage facility permit process administered by the Department of Water Resources.
2. The Department shall advise the Department of Water Resources of each permit application received.

D. Pre-application conference. Upon request of the applicant, the Department shall schedule and hold a pre-application conference with the applicant to discuss any requirements in Articles 1 and 2 of this Chapter.

E. Draft permit. The Department shall provide the applicant with a draft of the individual permit before publication of the Notice of Preliminary Decision specified in R18-9-109.

F. Permit duration. Except for a temporary permit, an individual permit is valid for the operational life of the facility and any period during which the facility is subject to a post-closure plan under R18-9-A209(C).

G. Permit issuance or denial.
1. The Director shall issue an individual permit, based upon the information obtained by or made available to the Department, if the Director determines that the applicant will comply with A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter.
2. The Director shall provide the applicant with written notification of the final decision to issue or deny the permit within the overall licensing time-frame requirements under 18 A.A.C. 1, Article 5, Table 10 and the following:
   a. The applicant's right to appeal the final permit determination, including the number of days the applicant has to file a protest and the name and telephone number of the Department contact person who can answer questions regarding the appeals process;
   b. If the permit is denied under R18-9-A213(B), the reason for the denial with reference to the statute or rule on which the denial is based; and
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A202. Technical Requirements

A. Except as specified in R18-9-A201(C)(1), an applicant shall, as required under R18-9-A201(B)(4), submit the following technical information as attachments to the individual permit application:
1. A topographic map, or other appropriate map approved by the Department, of the facility location and contiguous land area showing the known use of adjacent properties, all known water well locations found within one-half mile of the facility, and a description of well construction details and well uses, if available;
2. A facility site plan showing all known property lines, structures, water wells, injection wells, drywells and their uses, topography, and the location of points of discharge. The facility site plan shall include all known borings. If the Department determines that borings are numerous, the applicant shall satisfy this requirement with a narrative description of the number and location of the borings;
3. The facility design documents indicating proposed or as-built design details and proposed or as-built configuration of basins, ponds, waste storage areas, drainage diversion features, or other engineered elements of the facility affecting discharge. When formal as-built plan submittals are not available, the applicant shall provide documentation sufficient to allow evaluation of those elements of the facility affecting discharge, following the demonstration requirements of A.R.S. § 49-243(B). An applicant seeking an Aquifer Protection Permit for a sewage treatment facility satisfies the requirements of this subsection by submitting the documents required in R18-9-B202 and R18-9-B203;
4. A summary of the known past facility discharge activities and the proposed facility discharge activities indicating all of the following:

a. The chemical, biological, and physical characteristics of the discharge;
b. The rate, volume, and frequency of the discharge for each facility; and
c. The location of the discharge and a map outlining the pollutant management area described in A.R.S. § 49-244(1);

5. A description of the BADCT employed in the facility, including:
   a. A statement of the technology, processes, operating methods, or other alternatives proposed to meet the requirements of A.R.S. § 49-243(B), (G), or (P), as applicable. The statement shall describe:
      i. The alternative discharge control measures considered,
      ii. The technical and economic advantages and disadvantages of each alternative, and
      iii. The justification for selection or rejection of each alternative;
   b. An evaluation of each alternative discharge control technology relative to the amount of discharge reduction achievable, site-specific hydrologic and geologic characteristics, other environmental impacts, and water conservation or augmentation;
   c. For a new facility, an industry-wide evaluation of the economic impact of implementation of each alternative discharge control technology;
   d. For an existing facility, a statement reflecting the consideration of factors listed in A.R.S. § 49-243(B)(1)(a) through (h);
   e. A sewage treatment facility meeting the BADCT requirements under Article 2, Part B of this Chapter satisfies the requirements under subsections (A)(5)(a) through (d).
6. Proposed points of compliance for the facility based on A.R.S. § 49-244. An applicant shall demonstrate that:
   a. The facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the proposed point of compliance; or
   b. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, no additional degradation of the aquifer relative to that pollutant and determined at the proposed point of compliance will occur as a result of the discharge from the proposed facility. In this case, the applicant shall submit an Ambient Groundwater Monitoring Report that includes:
      i. Data from eight or more rounds of ambient groundwater samples collected to represent groundwater quality at the proposed points of compliance, and
      ii. An AQL proposal for each pollutant that exceeds an Aquifer Water Quality Standard;
7. A contingency plan that meets the requirements of R18-9-A204;
8. A hydrogeologic study that defines the discharge impact area for the expected duration of the facility. The Department may allow the applicant to submit an abbreviated hydrogeologic study or, if warranted, no hydrogeologic study, based upon the quantity and characteristics of the pollutants discharged, the methods of disposal, and the site conditions. The applicant may include information from a previous study of the affected area to meet a requirement of the hydrogeologic study, if the previous study accurately represents current hydrogeologic conditions.
   a. The hydrogeologic study shall demonstrate:
      i. That the facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the applicable point of compliance; or
      ii. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, that no additional degradation of the aquifer relative to that pollutant and determined at the applicable point of compliance will occur as a result of the discharge from the proposed facility;
   b. Based on the quantity and characteristics of pollutants discharged, methods of disposal, and site conditions, the Department may require the applicant to provide:
      i. A description of the surface and subsurface geology, including a description of all borings;
      ii. The location of any perennial, intermittent, or ephemeral surface water bodies;
      iii. The characteristics of the aquifer and geologic units with limited permeability, including depth, hydraulic conductivity, and transmissivity;
      iv. The rate, volume, and direction of surface water and groundwater flow, including hydrographs, if available, and equipotential maps;
      v. The precise location or estimate of the location of the 100-year flood plain and an assessment of the 100-year flood surface flow and potential impacts on the facility;
      vi. Documentation of the existing quality of the water in the aquifers underlying the site, including, where available, the method of analysis, quality assurance, and quality control procedures associated with the documentation;
      vii. Documentation of the extent and degree of any known soil contamination at the site;
      viii. An assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials;
      ix. For an underground water storage facility, an assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials or cause the migration of contaminated groundwater;
      x. Any changes in the water quality expected because of the discharge;
      xi. A description of any expected changes in the elevation or flow directions of the groundwater expected to be caused by the facility;
      xii. A map of the facility's discharge impact area; or
      xiii. The criteria and methodologies used to determine the discharge impact area.
9. A detailed proposal indicating the alert levels, discharge limitations, monitoring requirements, compliance schedules, and temporary cessation or plans that the applicant will use to satisfy the requirements of A.R.S. Title 49, Chapter 2, Article 3, and Articles 1 and 2 of this Chapter;
10. Closure and post-closure strategies or plans; and
11. Any other relevant information required by the Department to determine whether to issue a permit.

B. An applicant shall demonstrate the ability to maintain the technical capability necessary to carry out the terms of the individual permit, including a demonstration that a certified operator will operate the facility if a certified operator is required under 18 A.A.C. 5. The applicant shall make the demonstration by submitting the following information for each person principally responsible for designing, constructing, or operating the facility:
1. Pertinent licenses or certifications held by the person;
2. Professional training relevant to the design, construction, or operation of the facility; and
3. Work experience relevant to the design, construction, or operation of the facility.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A203. Financial Requirements

A. Definitions.
1. "Book net worth" means the net difference between total assets and total liabilities.
2. "Face amount" means the total amount the insurer is obligated to pay under the policy.
3. "Net working capital" means current assets minus current liabilities.
4. "Substantial business relationship" means a pattern of recent or ongoing business transactions to the extent that a guaranty contract issued incident to that relationship is valid and enforceable.
5. "Tangible net worth" means an owner or operator's book net worth, plus subordinated debts, less goodwill, patent rights, royalties, and assets and receivables due from affiliates or shareholders.

B. Financial demonstration. A person applying for an individual permit shall demonstrate financial capability to construct, operate, close, and ensure proper post-closure care of the facility in compliance with A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; and the conditions of the individual permit. The applicant shall:
1. Submit a letter signed by the chief financial officer stating that the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5);
2. For a state or federal agency, county, city, town, or other local governmental entity, submit a statement specifying the details of the financial arrangements used to meet the estimated closure and post-closure costs submitted under R18-9-A201(B)(5), including any other details that demonstrate how the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5);
3. For other than a state or federal agency, county, city, town, or other local governmental entity, submit the information required for at least one of the financial assurance mechanisms listed in subsection (C) that covers the closure and post-closure costs submitted under R18-9-A201(B)(5), including:
   a. The selected financial mechanism or mechanisms;
   b. The amount covered by each financial mechanism;
   c. The institution or company that is responsible for each financial mechanism used in the demonstration; and
   d. Any other details that demonstrate how the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5); and
4. For a facility subject to R18-9-A201(B)(5)(b)(iii) and not owned by a state or federal agency, county, city, town, or other local governmental entity, submit evidence of financial arrangements to cover the operation and maintenance costs described in R18-9-A201(B)(5).

C. Financial assurance mechanisms. The applicant may use any of the following mechanisms to cover the financial assurance obligation under R18-9-A201(B)(5):
1. Financial test for self-assurance. If an applicant uses a financial test for self-assurance, the applicant shall not consolidate the financial statement with a parent or sibling company. The applicant shall make the demonstration in either subsection (C)(1)(a) or (b) and submit the information required in subsection (C)(1)(c):
   a. The applicant may demonstrate:
      i. One of the following:
         (1) A ratio of total liabilities to net worth less than 2.0 and a ratio of current assets to current liabilities greater than 1.5;
         (2) A ratio of total liabilities to net worth less than 2.0 and a ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or
         (3) A ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1 and a ratio of current assets to current liabilities greater than 1.5;
      ii. The net working capital and tangible net worth of the applicant each are at least six times the closure cost estimate; and
      iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; or
   b. The applicant may demonstrate:
      i. The applicant's senior unsecured debt has a current investment-grade rating as issued by Moody's Investor Service, Inc.; Standard and Poor's Corporation; or Fitch Ratings;
      ii. The tangible net worth of the applicant is at least six times the closure cost estimate; and
      iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; and
   c. The applicant shall submit:
      i. A letter signed by the applicant's chief financial officer that identifies the criterion specified in subsection (C)(1)(a) or (b) and used by the applicant to satisfy the financial assurance requirements of this Section, an explanation of how the applicant meets the criterion, and certification of the letter's accuracy, and
      ii. A statement from an independent certified public accountant verifying that the demonstration submitted under subsection (C)(1)(c)(i) is accurate based on a review of the applicant's financial statements for the latest completed fiscal year or more recent financial data and no adjustment to the financial statement is necessary.

2. Performance surety bond. The applicant may use a performance surety bond if the following conditions are met:
   a. The company providing the performance bond is listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury;
   b. The bond provides for performance of all the covered items listed in R18-9-A201(B)(5) by the surety, or by payment into a standby trust fund of an amount equal to the penal amount if the permittee fails to perform the required activities;
   c. The penal amount of the bond is at least equal to the amount of the cost estimate developed in R18-9-A201(B)(5) if the bond is the only method used to satisfy the requirements of this Section or a pro-rata amount if used with another financial assurance mechanism;
   d. The surety bond names the Arizona Department of Environmental Quality as beneficiary;
   e. The original surety bond is submitted to the Director;
   f. Under the terms of the bond, the surety is liable on the bond obligation when the permittee fails to perform as guaranteed by the bond; and
   g. The surety payments under the terms of the bond are deposited directly into the Standby Trust Fund.
3. Certificate of deposit. The applicant may use a certificate of deposit if the following conditions are met:
   a. The applicant submits to the Director one or more certificates of deposit made payable to or assigned to the Department to cover the applicant's financial assurance obligation or a pro-rata amount if used with another financial assurance mechanism;
   b. The certificate of deposit is insured by the Federal Deposit Insurance Corporation and is automatically renewable;
   c. The bank assigns the certificate of deposit to the Arizona Department of Environmental Quality;
   d. Only the Department has access to the certificate of deposit; and
   e. Interest accrues to the permittee during the period the applicant gives the certificate as financial assurance, unless the interest is required to satisfy the requirements in R18-9-A201(B)(5).
4. Trust fund. The applicant may use a trust fund if the following conditions are met:
   a. The trust fund names the Arizona Department of Environmental Quality as beneficiary, and
   b. The trust is initially funded in an amount at least equal to:
      i. The cost estimate of the closure plan or strategy submitted under R18-9-A201(B)(5),
      ii. The amount specified in a compliance schedule approved in the permit, or
      iii. A pro-rata amount if used with another financial assurance mechanism.
5. Letter of credit. The applicant may use a letter of credit if the following conditions are met:
   a. The financial institution issuing the letter is regulated and examined by a federal or state agency;
   b. The letter of credit is irrevocable and issued for at least one year in an amount equal to the cost estimate submitted under R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. The letter of credit provides that the expiration date is automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of cancellation or expiration. The permittee shall provide alternate financial assurance within 60 days of receiving the notice of expiration or cancellation;
   c. The financial institution names the Arizona Department of Environmental Quality as beneficiary for the letter of credit; and
   d. The letter is prepared by the financial institution and identifies the letter of credit issue date, expiration date, dollar sum of the credit, the name and address of the Department as the beneficiary, and the name and address of the applicant as the permittee.
6. Insurance policy. The applicant may use an insurance policy if the following conditions are met:
   a. The insurance is effective before signature of the permit or substitution of insurance for other extant financial assurance instruments posted with the Director;
   b. The insurer is authorized to transact the business of insurance in the state and has an AM BEST Rating of at least a B+ or the equivalent;
   c. The permittee submits a copy of the insurance policy to the Department;
   d. The insurance policy guarantees that funds are available to pay costs as submitted under R18-9-A201(B)(5) without a deductible. The policy also guarantees that once cleanup steps begin that the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;
   e. The policy guarantees that while closure and post-closure activities are conducted the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;
   f. The insurance policy is issued for a face amount at least equal to the current cost estimate submitted to the Director for performance of all items listed in R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. Actual payments by the insurer will not change the face amount, although the insurer's future liability is reduced by the amount of the payments, during the policy period;
   g. The insurance policy names the Arizona Department of Environmental Quality as additional insured;
   h. The policy contains a provision allowing assignment of the policy to a successor permittee. The transfer of the policy is conditional upon consent of the insurer and the Department; and
   i. The insurance policy provides that the insurer does not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, provides the insured with a renewal option at the face amount of the expiring policy. If the permittee fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of the cancellation. If the insurer cancels the policy, the

permittee shall provide alternate financial assurance within 60 days of receiving the notice of cancellation.

7. Cash deposit. The applicant may use a cash deposit if the cash is deposited with the Department to cover the financial assurance obligation under R18-9-A201(B)(5).
8. Guarantees.
   a. The applicant may use guarantees to cover the financial assurance obligation under R18-9-A201(B)(5) if the following conditions are met:
      i. The applicant submits to the Department an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws. If the applicant is a corporation, the applicant shall include a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the permittee's financial assurance obligation;
      ii. The applicant submits to the Department documentation that explains the substantial business relationship between the guarantor and the permittee;
      iii. The applicant demonstrates that the guarantor meets conditions of the financial mechanism listed in subsection (C)(1). For purposes of applying the criteria in subsection (C)(1) to a guarantor, substitute "guarantor" for the term "applicant" as used in subsection (C)(1);
      iv. The guarantee is governed by and complies with state law;
      v. The guarantee continues in full force until released by the Director or replaced by another financial assurance mechanism listed under subsection (C);
      vi. The guarantee provides that, if the permittee fails to perform closure or post-closure care of a facility covered by the guarantee, the guarantor shall perform or pay a third party to perform closure or post-closure care, as required by the permit, or establish a fully funded trust fund as specified under subsection (C)(4) in the name of the owner or operator; and
      vii. The guarantor names the Arizona Department of Environmental Quality as beneficiary of the guarantee.
   b. Guarantee reporting. The guarantor shall notify or submit a report to the Department within 30 days of:
      i. An increase in financial responsibility during the fiscal year that affects the guarantor's ability to meet the financial demonstration;
      ii. Receiving an adverse auditor's notice, opinion, or qualification; or
      iii. Receiving a Department notification requesting an update of the guarantor's financial condition.
9. An applicant may use a financial assurance mechanism not listed in subsection (C)(1) through (8) if approved by the Director.

D. Loss of coverage. If the Director believes that a permittee will lose financial capability under subsection (C), the permittee shall, within 30 days from the date of receipt of the Director's request, submit evidence that the financial demonstration under subsection (B) is being met or provide an alternative financial assurance mechanism.

E. Financial assurance mechanism substitution. A permittee may substitute one financial assurance mechanism for another if the substitution is approved by the Director through an amendment under subsection (F).

F. Permit amendment. The permittee shall apply for an amendment to the individual permit if the permittee changes a financial assurance mechanism or if the permittee's revision of the closure strategy results in an increase in the estimated cost under R18-9-A201(B)(5). If a permittee seeks to amend a permit under R18-9-A211(B), the permittee shall submit a financial capability demonstration for all facilities covered by the amended individual permit with the permit amendment request.

G. Previous financial demonstration. If an applicant shows that the financial assurance demonstration required under this Section is covered within a financial demonstration already made to a governmental agency and the Department has access to that information, the applicant is not required to resubmit the information. The applicant shall certify that the current financial condition is equal to or better than the condition reflected in the financial demonstration provided to the other governmental agency. This provision does not apply to a demonstration required under subsection (F).

H. Recordkeeping. A permittee shall maintain the financial capability for the duration of the permit and report as specified in the permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A204. Contingency Plan

A. An individual permit shall specify a contingency plan that defines the actions to be taken if a discharge results in any of the following:
1. A violation of an Aquifer Water Quality Standard or an AQL,
2. A violation of a discharge limitation,
3. A violation of any other permit condition,
4. An alert level is exceeded, or
5. An imminent and substantial endangerment to the public health or the environment.

B. The contingency plan may include one or more of the following actions if a discharge results in any of the conditions described in subsection (A):
1. Verification sampling;
2. Notification to downstream or downgradient users who may be directly affected by the discharge;
3. Further monitoring that may include increased frequency, additional constituents, or additional monitoring locations;
4. Inspection, testing, operation, or maintenance of discharge control features at the facility;
5. Evaluation of the effectiveness of discharge control technology at the facility that may include technology upgrades;
6. Evaluation of pretreatment for sewage treatment facilities;
7. Preparation of a hydrogeologic study to assess the extent of soil, surface water, or aquifer impact;
8. Corrective action that includes any of the following measures:
   a. Control of the source of an unauthorized discharge,

b. Soil cleanup,
c. Cleanup of affected surface waters,
d. Cleanup of affected parts of the aquifer, or
e. Mitigation measures to limit the impact of pollutants on existing uses of the aquifer.

C. A permittee shall not take a corrective action proposed under subsection (B)(8) unless the action is approved by the Department.
1. Emergency response provisions and corrective actions specifically identified in the contingency plan submitted with a permit application are subject to approval by the Department during the application review process.
2. The permittee may propose to the Department a corrective action other than those already identified in the contingency plan if a discharge results in any of the conditions identified in subsection (A).
3. The Department shall approve the proposed corrective action if the corrective action provides a plan and expedient time-frame to return the facility to compliance with the facility's permit conditions, A.R.S. Title 49, Chapter 2, and Articles 1 and 2 of this Chapter.
4. The Director may incorporate corrective actions into an Aquifer Protection Permit.

D. A contingency plan shall contain emergency response provisions to address an imminent and substantial endangerment to public health or the environment including:
1. Twenty-four hour emergency response measures;
2. The name of an emergency response coordinator responsible for implementing the contingency plan;
3. Immediate notification to the Department regarding any emergency response measure taken;
4. A list of people to contact, including names, addresses, and telephone numbers if an imminent and substantial endangerment to public health or the environment arises; and
5. A general description of the procedures, personnel, and equipment proposed to mitigate unauthorized discharges.

E. A permittee may amend a contingency plan required by the Federal Water Pollution Control Act (P.L. 92-500; 86 Stat. 816; 33 U.S.C. 1251, et seq., as amended), or the Resource Conservation and Recovery Act of 1976 (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), to meet the requirements of this Section and submit it to the Department for approval instead of a separate aquifer protection contingency plan.

F. A permittee shall maintain at least one copy of the contingency plan required by the individual permit at the location where day-to-day decisions regarding the operation of the facility are made. A permittee shall advise all employees responsible for the operation of the facility of the location of the contingency plan.

G. A permittee shall promptly revise the contingency plan upon any change to the information contained in the plan.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A205. Alert Levels, Discharge Limitations, and AQLs

A. Alert levels.
1. If the Department prescribes an alert level in an individual permit, the Department shall base the alert level on the site-specific conditions described by the applicant in the application submitted under R18-9-A201(A)(2) or other information available to the Department.
2. The Department may specify an alert level based on a pollutant that indicates the potential appearance of another pollutant.
3. The Department may specify the measurement of an alert level at a location appropriate for the discharge activity, considering the physical, chemical, and biological characteristics of the discharge, the particular treatment process, and the site-specific conditions.

B. Discharge limitations. If the Department prescribes discharge limitations in an individual permit, the Department shall base the discharge limitations on the considerations described in A.R.S. § 49-243.

C. AQLs. The Department may prescribe an AQL in an individual permit to ensure that the facility continues to meet the criteria under A.R.S. § 49-243(B)(2) or (3).
1. If the concentration of a pollutant in the aquifer does not exceed the Aquifer Water Quality Standard, the Department shall set the AQL at the Aquifer Water Quality Standard.
2. If the concentration of a pollutant in the aquifer exceeds the Aquifer Water Quality Standard, the Department shall set the AQL higher than the Aquifer Water Quality Standard.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A206. Monitoring Requirements

A. Monitoring.
1. The Department shall determine whether monitoring is required to assure compliance with Aquifer Protection Permit conditions and with the applicable Aquifer Water Quality Standards established under A.R.S. §§ 49-221, 49-223, 49-241 through 49-244, and 49-250 through 49-252.
2. If monitoring is required, the Director shall specify to the permittee:
   a. The type and method of monitoring;
   b. The frequency of monitoring;
   c. Any requirements for the installation, use, or maintenance of monitoring equipment; and
   d. The intervals at which the permittee reports the monitoring results to the Department.

B. Recordkeeping.
1. A permittee shall make a monitoring record for each sample taken as required by the individual permit consisting of all of the following:
   a. The date, time, and exact place of a sampling and the name of each individual who performed the sampling;
   b. The procedures used to collect the sample;
   c. The date sample analysis was completed;
   d. The name of each individual or laboratory performing the analysis;
   e. The analytical techniques or methods used to perform the sampling and analysis;
   f. The chain of custody records; and
   g. Any field notes relating to the information described in subsections (B)(1)(a) through (f).

2. A permittee shall make a monitoring record for each measurement made, as required by the individual permit, consisting of all of the following:
   a. The date, time, and exact place of the measurement and the name of each individual who performed the measurement;
   b. The procedures used to make the measurement; and
   c. Any field notes relating to the information described in subsections (B)(2)(a) and (b).
3. A permittee shall maintain monitoring records for at least 10 years after the date of the sample or measurement, unless the Department specifies a shorter time period in the permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A207. Reporting Requirements

A. A permittee shall notify the Department within five days after becoming aware of a violation of a permit condition or that an alert level was exceeded. The permittee shall inform the Department whether the contingency plan described in R18-9-A204 was implemented.

B. In addition to the requirements in subsection (A), a permittee shall submit a written report to the Department within 30 days after the permittee becomes aware of a violation of a permit condition. The report shall contain:
1. A description of the violation and its cause;
2. The period of violation, including exact date and time, if known, and the anticipated time period the violation is expected to continue;
3. Any action taken or planned to mitigate the effects of the violation or to eliminate or prevent recurrence of the violation;
4. Any monitoring activity or other information that indicates that a pollutant is expected to cause a violation of an Aquifer Water Quality Standard; and
5. Any malfunction or failure of a pollution control device or other equipment or process.

C. A permittee shall notify the Department within five days after the occurrence of any of the following:
1. The permittee's filing of bankruptcy, or
2. The entry of any order or judgment not issued by the Director against the permittee for the enforcement of any federal or state environmental protection statute or rule.

D. The Director shall specify the format for submitting results from monitoring conducted under R18-9-A206.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A208. Compliance Schedule

A. A permittee shall follow the compliance schedule established in the individual permit.
1. If a compliance schedule provides that an action is required more than one year after the date of permit issuance, the schedule shall establish interim requirements and dates for their achievement.
2. If the time necessary for completion of an interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall contain interim dates for submission of reports on progress toward completion of the interim requirements and shall indicate a projected completion date.
3. Unless otherwise specified in the permit, within 30 days after the applicable date specified in a compliance schedule, a permittee shall submit to the Department a report documenting that the required action was taken within the time specified.
4. After reviewing the compliance schedule activity the Director may amend the Aquifer Protection Permit, based on changed circumstances relating to the required action.

B. The Department shall consider all of the following factors when setting the compliance schedule requirements:
1. The character and impact of the discharge,
2. The nature of construction or activity required by the permit,
3. The number of persons affected or potentially affected by the discharge,
4. The current state of treatment technology, and
5. The age of the facility.

C. For a new facility, the Department shall not defer to a compliance schedule any requirement necessary to satisfy the criteria under A.R.S. § 49-243(B).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A209. Temporary Cessation, Closure, Post-closure

A. Temporary cessation.
1. A permittee shall notify the Department before a cessation of operations at the facility of at least 60 days duration.
2. The permittee shall implement any condition specified in the individual permit for the temporary cessation.
3. If the permit does not specify any temporary cessation condition, the permittee shall, prior to implementation, submit the proposed temporary cessation plan for Department approval.

B. Closure.
1. Before providing notice under subsection (B)(2), a person may request that the Director review a site investigation plan for a facility under subsection (B)(3)(a) or the results of a site investigation at a facility to determine compliance with this subsection and A.R.S. § 49-252.
2. A person shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
3. The person shall submit a closure plan for Director approval within 90 days following the notification of intent to cease operations with the applicable fee established in 18 A.A.C. 14. A complete closure plan shall include:
   a. A site investigation plan that includes a summary of relevant site studies already conducted and a proposed scope of work for any additional site investigation necessary to identify:
      i. The lateral and vertical extent of contamination in soils and groundwater, using applicable standards;
      ii. The approximate quantity and chemical, biological, and physical characteristics of each

waste, contaminated water, or contaminated soil proposed for removal from the facility;

iii. The approximate quantity and chemical, biological, and physical characteristics of each waste, contaminated water, or contaminated soil that will remain at the facility; and

iv. Information regarding site conditions related to pollutant fate and transport that may influence the scope of sampling necessary to characterize the site for closure;

b. A summary describing the results of a site investigation and any other information used to identify:

i. The lateral and vertical extent of soil and groundwater contamination, using applicable standards, and the analytical results that support the determination;

ii. The approximate quantity and chemical, biological, and physical characteristics of each material scheduled for removal;

iii. The destination of the materials and documentation that the destination is approved to accept the materials;

iv. The approximate quantity and chemical, biological, and physical characteristics of each material that remains at the facility; and

v. Any other relevant information the Department determines is necessary;

c. A closure design that identifies:

i. The method used, if any, to treat any material remaining at the facility;

ii. The method used to control the discharge of pollutants from the facility;

iii. Any limitation on future land or water uses created as a result of the facility's operations or closure activities and a Declaration of Environmental Use Restriction according to A.R.S. § 49-152, if necessary; and

iv. The methods used to secure the facility;

d. An estimate of the cost of closure;

e. A schedule for implementation of the closure plan and submission of a post-closure plan if clean closure is not achieved; and

f. For an implemented closure plan, a summary report of the results of site investigation performed during closure activities, including confirmation and verification sampling.

4. Within 60 days of receipt of a complete closure plan, the Department shall determine whether the closure plan achieves clean closure.

a. If the implemented complete closure plan achieves clean closure, the Director shall:

i. If the facility is not covered by an Aquifer Protection Permit, send the person a letter of approval; or

ii. If the facility is covered by an Aquifer Protection Permit, send the person a Permit Release Notice issued under subsection (C)(2)(c).

b. If the implemented complete closure plan did not achieve clean closure, the person shall submit a post-closure plan under subsection (C) and the following documents within 90 days from the date on the Department's notice or as specified under A.R.S. § 49-252(E):

i. An application for an individual permit, or

ii. A request to amend a current individual permit to address closure activities and post-closure monitoring and maintenance at the facility.

C. Post-closure. A person shall describe post-closure monitoring and maintenance activities in an application for a permit or an amendment to an individual permit and submit it to the Department for approval.

1. The application shall include:

a. The duration of post-closure care;

b. The monitoring procedures proposed by the permittee, including monitoring frequency, type, and location;

c. A description of the operating and maintenance procedures proposed for maintaining aquifer quality protection devices, such as liners, treatment systems, pump-back systems, surface water and stormwater management systems, and monitoring wells;

d. A schedule and description of physical inspections proposed at the facility following closure;

e. An estimate of the cost of post-closure maintenance and monitoring;

f. A description of limitations on future land or water uses, or both, at the facility site as a result of facility operations; and

g. The applicable fee established in 18 A.A.C. 14.

2. The Director shall include the post-closure plan submitted under subsection (C)(1) in the individual permit or permit amendment.

a. The permittee shall provide the Department written notice that a closure plan or a post-closure plan was fully implemented within 30 calendar days of implementation of the plan. The notice shall include a summary report confirming the closure design and describing the results of sampling performed during closure activities and post-closure activities, if any, to demonstrate the level of cleanup achieved.

b. The Director may, upon receipt of the notice, inspect the facility to ensure that the closure plan has been fully implemented.

c. The Director shall issue a Permit Release Notice if the permittee satisfies all closure and post-closure requirements.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A210. Temporary Individual Permit

A. A person may apply for a temporary individual permit for either of the following:

1. A pilot project to develop data for an Aquifer Protection Permit application for the full-scale project, or

2. A facility with a discharge lasting no more than six months.

B. The applicant shall submit a preliminary application containing the information required in R18-9-A201(B)(1).

C. The Department shall, based on the preliminary application and in consultation with the applicant, determine and provide the applicant notice of any additional information in R18-9-A201(B) that is necessary to complete the application.

D. Public participation.

1. If the Director issues a temporary individual permit, the Director shall postpone the public participation requirements under R18-9-109.
2. The Director shall not postpone notification of the opportunity for public participation for more than 30 days from the date on the temporary individual permit.
3. The Director may amend or revoke the temporary individual permit after consideration of public comments.
4. The Director shall not issue a public notice or hold a public hearing if a temporary individual permit is renewed without change.
5. The Director shall follow the public participation requirements under R18-9-109 when making a significant amendment to a temporary individual permit.

E. A temporary individual permit expires after one year unless it is renewed. The Director may renew a temporary individual permit no more than one time.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A211. Permit Amendments

A. The Director may amend an individual permit based upon a request or upon the Director's initiative.
1. A permittee shall submit a request for permit amendment in writing on a form provided by the Department with the applicable fee established in 18 A.A.C. 14, explaining the facts and reasons justifying the request.
2. The Department shall process amendment requests following the licensing time-frames established under 18 A.A.C. 1, Article 5, Table 10.
3. An amended permit supersedes the previous permit upon the effective date of the amendment.

B. Significant permit amendment. The Director shall make a significant amendment to an individual permit if:
1. Part or all of an existing facility becomes a new facility under A.R.S. § 49-201;
2. A physical change in a permitted facility or a change in its method of operation results in:
   a. An increase of 10 percent or more in the permitted volume of pollutants discharged, except a sewage treatment facility;
   b. An increase in design flow of a sewage treatment facility as follows:

Permitted Design Flow	Increase in Design Flow
500,000 gallons per day or less	10%
Greater than 500,000 gallons per day but less than or equal to five million gallons per day	6%
Greater than five million gallons per day but less than or equal to 50 million gallons per day	4%
Greater than 50 million gallons per day	2%

   c. Discharge of an additional pollutant not allowed by a facility's original individual permit. The Director may consider the addition of a pollutant with a chemical composition substantially similar to a pollutant the permit currently allows by making an "other" amendment to the individual permit as prescribed in subsection (D);
   d. For any pollutant not addressed in a facility's individual permit, any increase that brings the level of the pollutant to within 80 percent or more of a numeric Aquifer Water Quality Standard at the point of compliance; or
   e. An increase in the concentration in the discharge of a pollutant listed under A.R.S. § 49-243(I);
3. Based upon available information, the facility can no longer demonstrate that its discharge will comply with A.R.S. § 49-243(B)(2) or (3);
4. The permittee requests and the Department agrees to less stringent monitoring that reduces the frequency in monitoring or reporting or reduces the number of pollutants monitored, and the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
5. It is necessary to change the designation of a point of compliance;
6. It is necessary to update BADCT for a facility that was issued an individual permit and was not constructed within five years of permit issuance;
7. The permittee requests and the Department agrees to less stringent discharge limitations when the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
8. It is necessary to make an addition to or a substantial change in closure requirements or to provide for post-closure maintenance and monitoring; or
9. Material and substantial alterations or additions to a permitted facility, including a change in disposal method, justify a change in permit conditions.

C. Minor permit amendment. The Director shall make a minor amendment to an individual permit to:
1. Correct a typographical error;
2. Change nontechnical administrative information, excluding a permit transfer;
3. Correct minor technical errors, such as errors in calculation, locational information, citations of law, and citations of construction specifications;
4. Increase the frequency of monitoring or reporting, or to revise a laboratory method;
5. Make a discharge limitation more stringent;
6. Make a change in a recordkeeping retention requirement; or
7. Insert calculated alert levels, AQLs, or other permit limits into a permit based on monitoring subsequent to permit issuance, if a requirement to establish the levels or limits and the method for calculation of the levels or limits was established in the original permit.

D. "Other" permit amendment.
1. The Director may make an "other" amendment to an individual permit if the amendment is not a significant or minor permit amendment prescribed in this Section, based on an evaluation of the information relevant to the amendment.
2. Examples of an "other" amendment to an individual permit include:
   a. A change in a construction requirement, treatment method, or operational practice, if the alteration complies with the requirements of Articles 1 and 2

of this Chapter and provides equal or better performance;

b. A change in an interim or final compliance date in a compliance schedule, if the Director determines just cause exists for changing the date;

c. A change in the permittee's financial assurance mechanism under R18-9-A203(C);

d. A permit transfer under R18-9-A212;

e. The replacement of monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness;

f. Any increase in the volume of pollutants discharged that is less than that described in subsection (B)(2)(a) or (b);

g. An adjustment of the permit to conform to rule or statutory provisions;

h. A calculation of an alert level, AQL, or other permit limit based on monitoring subsequent to permit issuance;

i. An addition of a point of compliance monitor well;

j. A combination of two or more permits at the same site as specified under R18-9-107;

k. An adjustment or incorporation of monitoring requirements to ensure Reclaimed Water Quality Standards developed under 18 A.A.C. 11, Article 3 are met; or

l. A change in a contingency plan resulting in equal or more efficient responsiveness.

E. The public notice and public participation requirements of R18-9-108 and R18-9-109 apply to a significant amendment. The public notice requirements apply to an "other" amendment. A minor amendment does not require a public notice or public participation.

F. The Director shall not amend or reissue a permit to allow use of a discharge control technology that provides a lesser degree of pollutant discharge reduction than the BADCT established in the individual Aquifer Protection Permit previously issued for a facility, unless:

1. The industrial classification of the facility has changed so that a new assessment of BADCT is appropriate,
2. The pollutant load has decreased or the pollutant composition has changed significantly to warrant a new assessment of the BADCT,
3. The Director approves a corrective or contingency action that necessitates a change in the treatment technology, or
4. The approved discharge control technology is not operating properly due to circumstances beyond the control of the owner or operator.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A212. Permit Transfer

A. The person subject to the continuance requirements under R18-9-105(A)(1), (2), or (3) shall notify the Department by certified mail within 15 days following a change of ownership. The notice shall include:

1. The name of the person transferring the facility;
2. The name of the new owner or operator;
3. The name and location of the facility;
4. The written agreement between the person transferring the facility and the new owner or operator indicating a specific date for transfer of all permit responsibility, coverage, and liability;
5. A signed declaration by the new owner or operator that the new owner or operator has reviewed the permit and agrees to the terms of the permit, including fee obligations under A.R.S. § 49-242; and
6. The applicable fee established in 18 A.A.C. 14.

B. A permittee may request that the Department transfer an individual permit to a new owner or operator.

1. The new owner or operator shall:
   a. Notify the Department by certified mail within 15 days after the change of ownership and include a written agreement between the previous and new owner indicating a specific date for transfer of all permit responsibility, coverage, and liability;
   b. Submit the applicable fee established in 18 A.A.C. 14;
   c. Demonstrate the technical and financial capability necessary to fully carry out the terms of the permit according to R18-9-A202 and R18-9-A203;
   d. Submit a signed statement that the new owner or operator has reviewed the permit and agrees to the terms of the permit; and
   e. Provide the Department with a copy of the Certificate of Disclosure if required by A.R.S. § 49-109.
2. If the Director amends the individual permit for the transfer, the new permittee is responsible for all conditions of the permit.

C. A permittee shall comply with all permit conditions until the Director transfers the permit, regardless of whether the permittee has sold or disposed of the facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

A. The Director may, after notice and opportunity for hearing, suspend or revoke an individual permit or a continuance under R18-9-105(A)(1), (2), or (3) for any of the following:

1. A permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; or any permit condition;
2. A permittee misrepresented or omitted a fact, information, or data related to an Aquifer Protection Permit application or permit condition;
3. The Director determines that a permitted activity is causing or will cause a violation of an Aquifer Water Quality Standard at a point of compliance;
4. A permitted discharge is causing or will cause imminent and substantial endangerment to public health or the environment;
5. A permittee failed to maintain the financial capability under R18-9-A203(B); or
6. A permittee failed to construct a facility within five years of permit issuance and:
   a. It is necessary to update BADCT for the facility, and
   b. The Department has not issued an amended permit under R18-9-A211(B)(6).

B. The Director may deny an individual permit if the Director determines upon completion of the application process that the applicant has:

1. Failed or refused to correct a deficiency in the permit application;
2. Failed to demonstrate that the facility and the operation will comply with the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter. The Director shall base this determination on:
   a. The information submitted in the Aquifer Protection Permit application,
   b. Any information submitted to the Department following a public hearing, or
   c. Any relevant information that is developed or acquired by the Department; or
3. Provided false or misleading information.

C. The Director shall terminate an individual permit if each facility covered under the individual permit:
1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii) for the closed facility, or
2. Is covered under another Aquifer Protection Permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A214. Requested Coverage Under a General Permit

A. If a person who applied for or was issued an individual permit qualifies to operate a facility under a general permit established in Article 3 of this Chapter, the person may request that the individual permit be terminated and replaced by the general permit. The person shall submit the Notice of Intent to Discharge under R18-9-A301(B) with the appropriate fee established in 18 A.A.C. 14.

B. The individual permit is valid and enforceable with respect to a discharge from each facility until the Director determines that the discharge from each facility is covered under a general permit.

C. The owner or operator operating under a general permit shall comply with all applicable general permit requirements in Article 3 of this Chapter.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

A. Applicability. The requirements in this Article apply to all sewage treatment facilities, including expansions of existing sewage treatment facilities, that treat wastewater containing sewage, unless the discharge is authorized by a general permit under Article 3 of this Chapter.

B. The Director may specify alert levels, discharge limitations, design specifications, and operation and maintenance requirements in the permit that are based upon information provided by the applicant and that meet the requirements under A.R.S. § 49-243(B)(1).

C. The permittee shall ensure that a sewage treatment facility is operated by a person certified under 18 A.A.C. 5, Article 1, for the grade of the facility.

D. Operation and maintenance.
1. The owner or operator shall maintain, at the sewage treatment facility, an operation and maintenance manual for the facility and shall update the manual as needed.
2. The owner or operator shall use the operation and maintenance manual to guide facility operations to ensure compliance with the terms of the Aquifer Protection Permit and to prevent any environmental nuisance described under A.R.S. § 49-141(A).
3. The Director may specify adherence to any operation or maintenance requirement as an Aquifer Protection Permit condition to ensure that the terms of the Aquifer Protection Permit are met.
4. The owner or operator shall make the operation and maintenance manual available to the Department upon request.

E. A person shall not create or maintain a connection between any part of a sewage treatment facility and a potable water supply so that sewage or wastewater contaminates a potable or public water supply.

F. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from a sewage treatment facility.

G. Reclaimed water dispensed to a direct reuse site from a sewage treatment facility is regulated under Reclaimed Water Quality Standards in 18 A.A.C. 11, Article 3.

H. The preparation, transport, or land application of any biosolids generated by a sewage treatment facility is regulated under 18 A.A.C. 9, Article 10.

I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

Sewage Treatment Facility Design Flow (gallons per day)	No Noise, Odor, or Aesthetic Controls (feet)	Full Noise, Odor, and Aesthetic Controls (feet)
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
   a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
   b. All odor-producing components of the sewage treatment facility are fully enclosed,
   c. Odor scrubbers or other odor-control devices are installed on all vents, and
   d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
   a. Allowed by local ordinance; or
   b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design

of the sewage treatment facility, and the potential for noise and odor.

J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B202. Design Report

A. A person applying for an individual permit shall submit a design report signed, dated, and sealed by an Arizona-registered professional engineer. The design report shall include the following information:

1. Wastewater characterization, including quantity, quality, seasonality, and impact of increased flows as the facility reaches design flow;
2. The proposed method of disposal, including solids management;
3. A description of the treatment unit processes and containment structures, including diagrams and calculations that demonstrate that the design meets BADCT requirements and will achieve treatment levels specified in R18-9-B204 through R18-9-B206, as applicable, for all flow conditions indicated in subsection (A)(9). If soil aquifer treatment or other aspects of site conditions are used to meet BADCT requirements, the applicant shall document performance of the site in the design report or the hydrogeologic report;
4. A description of planned normal operation;
5. A description of key maintenance activities and a description of contingency and emergency operation for the facility;
6. A description of construction management controls;
7. A description of the facility startup plan, including preoperational testing, expected treated wastewater characteristics and monitoring requirements during startup, expected time-frame for meeting performance requirements specified in R18-9-B204, and any other special startup condition that may merit consideration in the individual permit;
8. A site diagram depicting compliance with the setback requirements established in R18-9-B201(I) for the facility at design flow, and for each phase if the applicant proposes expansion of the facility in phases;
9. The following flow information in gallons per day for the proposed sewage treatment facility. If the application proposes expansion of the facility in phases, the following flow information for each phase:
   a. The design flow of the sewage treatment facility. The design flow is the average daily flow over a calendar year calculated as the sum of all influent flows to the facility based on Table 1, Unit Design Flows, unless a different basis for determining influent flows is approved by the Department;
   b. The maximum day. The maximum day is the greatest daily total flow that occurs over a 24-hour period within an annual cycle of flow variations;
   c. The maximum month. The maximum month is the average daily flow of the month with the greatest total flow within the annual cycle of flow variations;
   d. The peak hour. The peak hour is the greatest total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations;
   e. The minimum day. The minimum day is the least daily total flow that occurs over a 24-hour period within the annual cycle of flow variations;
   f. The minimum month. The minimum month is the average daily flow of the month with the least total flow within the annual cycle of flow variations; and
   g. The minimum hour. The minimum hour is the least total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations; and
10. Specifications for pipe, standby power source, and water and sewer line separation.

B. The Department may inspect an applicant's facility without notice to ensure that construction conforms to the design report.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B203. Engineering Plans and Specifications

A. A person applying for an individual permit for a sewage treatment facility with a design flow under one million gallons per day, shall submit engineering plans and specifications to the Department. The Director may waive this requirement if the Director previously approved engineering plans and specifications submitted by the same owner or operator for a sewage treatment facility with a design flow of more than one million gallons per day.

B. A person applying for an individual permit for a sewage treatment facility with a design flow of one million gallons per day or greater shall submit engineering plans and specifications if, upon review of the design report required in R18-9-B202, the Department finds that:

1. The design report fails to provide sufficient detail to determine adequacy of the proposed sewage treatment facility design;
2. The described design is innovative and does not reflect treatment technologies generally accepted within the industry;
3. The Department's calculations of removal efficiencies based on the design report show that the treatment facility cannot achieve treatment performance requirements;
4. The design report does not demonstrate:
   a. Protection from physical damage due to a 100-year flood,
   b. Ability to continuously operate during a 25-year flood, or
   c. Provision for a standby power source;
5. The design report shows inconsistency in sizing or compatibility between two or more unit process components of the sewage treatment facility;
6. The designer of the facility has:
   a. Designed a sewage treatment facility of at least a similar size on less than three previous occasions,
   b. Designed a sewage treatment facility that has been the subject of a Director enforcement action due to the facility design, or
   c. Been found by the Board of Technical Registration to have violated a provision in A.R.S. Title 32, Chapter 1;

7. The permittee seeks to expand its sewage treatment facility and the Department believes that the facility will require upgrades to the design not described and evaluated in the design report to meet the treatment performance requirements; or
8. The construction does not conform to the design report if the sewage treatment facility has already been constructed.

C. The Department shall review engineering plans and specifications upon request by an applicant seeking a permit for a sewage treatment facility, regardless of its flow.

D. The Department may inspect an applicant's facility without notice to ensure that construction generally conforms to engineering plans and specifications, as applicable.

E. Before discharging under a permit, the permittee shall submit an Engineer's Certificate of Completion signed, dated, and sealed by an Arizona-registered professional engineer in a format approved by the Department, that confirms that the facility is constructed according to the Department-approved design report or plans and specifications, as applicable.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B204. Treatment Performance Requirements for a New Facility

A. Definition. "Week" means a seven-day period starting on Sunday and ending on the following Saturday.

B. An owner or operator of a new sewage treatment facility shall ensure that the facility meets the following performance requirements upon release of the treated wastewater at the outfall:

1. Secondary treatment levels.
   a. Five-day biochemical oxygen demand (BOD_5) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average), or carbonaceous biochemical oxygen demand ($CBOD_5$) less than 25 mg/l (30-day average) or 40 mg/l (seven-day average);
   b. Total suspended solids (TSS) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average);
   c. pH maintained between 6.0 and 9.0 standard units; and
   d. A removal efficiency of 85 percent for BOD_5, $CBOD_5$, and TSS;
2. Secondary treatment by waste stabilization ponds is not considered BADCT unless an applicant demonstrates to the Department that site-specific hydrologic and geologic characteristics and other environmental factors are sufficient to justify secondary treatment by waste stabilization ponds;
3. Total nitrogen in the treated wastewater is less than 10 mg/l (five-month rolling geometric mean). If an applicant demonstrates, using appropriate monitoring that soil aquifer treatment will produce a total nitrogen concentration less than 10 mg/l in wastewater that percolates to groundwater, the Department may approve soil aquifer treatment for removal of total nitrogen as an alternative to meeting the performance requirement of 10 mg/l at the outfall;
4. Pathogen removal.
   a. For a sewage treatment facility with a design flow of less than 250,000 gallons per day at a site where the depth to the seasonally high groundwater table is greater than 20 feet and there is no karstic or fractured bedrock at the surface:
      i. The concentration of fecal coliform organisms in four of the wastewater samples collected during the week is less than 200 cfu/100 ml or the concentration of *E. coli* bacteria in four of the wastewater samples collected during the week is less than 126 cfu/100 ml, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 800 cfu/100 ml or the single sample maximum concentration of *E. coli* bacteria in a wastewater sample is not greater than 504 cfu/100 ml; and
      iii. An owner or operator of a facility may request a reduction in the monitoring frequency required in subsection (B)(4)(a)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(a)(i) and (ii) at the discharge point;
   b. For any other sewage treatment facility:
      i. No fecal coliform organisms or no *E. coli* bacteria are detected in four of the wastewater samples collected during the week, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 23 cfu/100 ml or the single sample maximum concentration of *E. coli* is not greater than 15 cfu/100 ml;
      iii. An owner or operator may request a reduction in the monitoring frequency required in subsection (B)(4)(b)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(b)(i) or (ii) at the discharge point;
   c. An owner or operator may use unit treatment processes, such as chlorination-dechlorination, ultraviolet, and ozone to achieve the pathogen removal performance requirements specified in subsections (B)(4)(a) and (b);
   d. The Department may approve soil aquifer treatment for the removal of fecal coliform or *E. coli* bacteria as an alternative to meeting the performance requirement in subsection (B)(4)(a) or (b), if the soil aquifer treatment process will produce a fecal coliform or *E. coli* bacteria concentration less than that required under subsection (B)(4)(a) or (b), in wastewater that percolates to groundwater;
5. Unless governed by A.R.S. § 49-243(I), the performance requirement for each constituent regulated under R18-11-

406(B) through (E) is the numeric Aquifer Water Quality Standard;

6. The performance requirement for a constituent regulated under A.R.S. § 49-243(I) is removal to the greatest extent practical regardless of cost.
   a. An operator shall minimize trihalomethane compounds generated as disinfection byproducts using chlorination, dechlorination, ultraviolet, or ozone as the disinfection system or using a technology demonstrated to have equivalent or better performance for removing or preventing trihalomethane compounds.
   b. For other pollutants regulated by A.R.S. § 49-243(I), an operator shall use one of the following methods to achieve industrial pretreatment:
      i. Regulate industrial sources of influent to the sewage treatment facility by setting limits on pollutant concentrations, monitoring for pollutants, and enforcing the limits to reduce, eliminate, or alter the nature of a pollutant before release into a sewage collection system;
      ii. Meet the pretreatment requirements of A.R.S. § 49-255.02; or
      iii. For sewage treatment facilities without significant industrial input, conduct periodic monitoring to detect industrial discharge; and
   7. A maximum seepage rate less than 550 gallons per day per acre for all containment structures within the treatment works. A sewage treatment facility that consists solely of containment structures with no other form of discharge complies with Article 2 Part B by operating below the maximum 550 gallon per day per acre seepage rate.

C. The Director shall incorporate treated wastewater discharge limitations and associated monitoring specified in this Section into the individual permit to ensure compliance with the BADCT requirements.

D. An applicant shall formally request in writing and justify an alternative that allows less stringent performance than that established in this Section, based on the criteria specified in A.R.S. § 49-243(B)(1).

E. If the request specified in subsection (D) involves treatment or disposal works that are a demonstration, experimental, or pilot project, the Director may issue an individual permit that places greater reliance on monitoring to ensure operational capability.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in A.R.S. § 49-201(16), the BADCT shall conform with the following:

1. The designer shall identify one or more design improvements that brings the facility closer to or within the treatment performance requirements specified in R18-9-B204, considering the factors listed in A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h);
2. The designer may eliminate from consideration alternatives identified in subsection (1) that are more expensive than the number of gallons of design flow times $1.00 per gallon; and
3. The designer shall select a design that incorporates one or more of the considered alternatives by giving preference to measures that will provide the greatest improvement toward meeting the treatment performance requirements specified in R18-9-B204.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

For an expansion of a sewage treatment facility, the BADCT shall conform with the following:

1. New facility BADCT requirements in R18-9-B204 apply to the following expansions:
   a. An increase in design flow by an amount equal to or greater than the increases specified in R18-9-A211(B)(2)(b); or
   b. An addition of a physically separate process or major piece of production equipment, building, or structure that causes a separate discharge to the extent that the treatment performance requirements for the pollutants addressed in R18-9-B204 can practicably be achieved by the addition.
2. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A301. Discharging Under a General Permit

A. Discharging requirements.

1. Type 1 General Permit. A person may discharge under a Type 1 General Permit without submitting a Notice of Intent to Discharge if the discharge is authorized by and meets:
   a. The applicable requirements of Article 3, Part A of this Chapter; and
   b. The specific terms of the Type 1 General Permit established in Article 3, Part B of this Chapter.
2. Type 2 General Permit. A person may discharge under a Type 2 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 2 General Permit established in Article 3, Part C of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B); and
   c. The person submits the applicable fee established in 18 A.A.C. 14.
3. Type 3 General Permit. A person may discharge under a Type 3 General Permit if:

a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 3 General Permit established in Article 3, Part D of this Chapter;
b. The person files a Notice of Intent to Discharge under subsection (B);
c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review and receives a written Discharge Authorization from the Director; and
d. The person submits the applicable fee established in 18 A.A.C. 14.

4. Type 4 General Permit. A person may discharge under a Type 4 General Permit if:
a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 4 General Permit established in Article 3, Part E of this Chapter;
b. The person files a Notice of Intent to Discharge under subsection (B);
c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review, including any deficiency relating to the construction of the facility;
d. The person receives a written Discharge Authorization from the Director before the facility discharges; and
e. The person submits the applicable fee established in 18 A.A.C. 14 or according to A.R.S. §§ 49-107 and 49-112.

B. Notice of Intent to Discharge.
1. A person seeking a Discharge Authorization under a general permit under subsections (A)(2), (3), or (4) shall submit, by certified mail, in person, or by another method approved by the Department, a Notice of Intent to Discharge on a form provided by the Department.
2. The Notice of Intent to Discharge shall include:
a. The name, address, and telephone number of the applicant;
b. The name, address, and telephone number of a contact person familiar with the operation of the facility;
c. The name, position, address, and telephone number of the owner or operator of the facility who has overall responsibility for compliance with the permit;
d. The legal description of the discharge areas, including the latitude and longitude coordinates;
e. A narrative description of the facility or project, including expected dates of operation, rate, and volume of discharge;
f. The additional requirements, if any, specified in the general permit for which the authorization is being sought;
g. A listing of any other federal or state environmental permits issued for or needed by the facility, including any individual permit, Groundwater Quality Protection Permit, or Notice of Disposal that may have previously authorized the discharge; and
h. A signature on the Notice of Intent to Discharge certifying that the applicant agrees to comply with all applicable requirements of this Article, including specific terms of the general permit.
3. Receipt of a completed Notice of Intent to Discharge by the Department begins the administrative completeness review for a Type 3 or Type 4 General Permit.

C. Type 3 General Permit authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of the general permit have been met.
2. Discharge Authorization issuance.
a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of the general permit and the applicable requirements of this Article, the Director shall issue a Discharge Authorization.
b. The Discharge Authorization authorizes the person to discharge under terms of the general permit and applicable requirements of this Article.
3. Discharge Authorization denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

D. Type 4 General Permit review.
1. Pre-construction phase and facility construction. A person shall not begin facility construction until the Director issues a Construction Authorization.
a. Inspection. The Department may inspect the facility site before construction to determine that the applicable terms of the general permit will be met.
b. Review. If the Department determines, based on an inspection or its review of design plans, specifications, or other required documents that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Department shall make a written request for additional information to determine whether the facility will meet the requirements of the general permit.
c. Construction Authorization. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design conforms with the requirements of the general permit and other applicable requirements of this Article, the Director shall issue a Construction Authorization to the person seeking to discharge. A Construction Authorization for an on-site wastewater treatment facility shall contain:
i. The design flow of the facility,

ii. The characteristics of the wastewater sources contributing to the facility,
iii. The general permits that apply, and
iv. A list of the documents that are the basis for the authorization.

d. Construction Authorization denial. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue a Construction Authorization. The notification shall include the information listed in subsections (D)(2)(d).

e. Construction.
i. A person shall complete construction within two years of receiving a Construction Authorization.
ii. Construction shall conform with the plans and documents approved by the Department in the Construction Authorization. A change in location, configuration, dimension, depth, material, or installation procedure does not require approval by the Department if the change continues to conform with the specific standard in this Article used as the basis for the original design.
iii. The person shall record all changes made during construction, including any changes approved under R18-9-A312(G) on the site plan as specified in R18-9-A309(C)(1) or on documents as specified in R18-9-A309(C)(2) or R18-9-E301(E), as applicable.

f. Completion of construction.
i. After completing construction of the facility, the person seeking to discharge shall submit any applicable documents specified in R18-9-A309(C) with the Request for Discharge Authorization form for an on-site wastewater treatment facility and the Engineer's Certificate of Completion specified in R18-9-E301(E) for a sewage collection system. Receipt of the documents by the Department initiates the post-construction review phase.
ii. If the Department does not receive the documentation specified in subsection (D)(1)(f)(i) by the end of the two-year construction period, the Notice of Intent to Discharge expires, and the person shall not continue construction or discharge.
iii. If the Notice of Intent to Discharge expires, the person shall submit a new Notice of Intent to Discharge under subsection (B) and the applicable fee under subsection (A)(4)(e) to begin or continue construction.

2. Post-construction phase.
a. Inspection. The Department may inspect the facility before issuing a Discharge Authorization to determine whether:
i. The construction conforms with the design authorized by the Department under subsection (D)(1)(c) and any changes recorded on the site plan as specified in R18-9-A309(C)(1) or other documents as specified in R18-9-A309(C)(2), or R18-9-E301(E), as applicable; and
ii. Terms of the general permit and applicable terms of this Article are met.

b. Deficiencies. If the Department identifies deficiencies based on an inspection of the constructed facility or during the review of documents submitted with the request for the Discharge Authorization, the Director shall provide a written explanation of the deficiencies to the person.

c. Discharge Authorization issuance.
i. Upon satisfactory completion of construction and documents required under R18-9-A309(C)(1) R18-9-A309(C)(2), or R18-9-E301(E), as applicable, the Director shall issue a Discharge Authorization.
ii. The Discharge Authorization allows a person to discharge under terms of the general permit and applicable requirements of this Article and the stated terms of the Construction Authorization.

d. Discharge Authorization denial. If, after receiving evidence of correction submitted by the person seeking to discharge, the Department determines that the deficiencies are not satisfactorily corrected, the Director shall notify the person seeking to discharge of the Director's decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
i. The reason for the denial with reference to the statute or rule on which the denial is based;
ii. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
iii. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A302. Point of Compliance

The point of compliance is the point at which compliance with Aquifer Water Quality Standards is determined.

1. Except as provided in this Section or as stated in a specific general permit, the applicable point of compliance at a facility operating under a general permit is a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility.
2. The point of compliance is the limit of the pollutant management area.
a. The pollutant management area is the horizontal plane of the area on which pollutants are or will be placed.
b. If a facility operating under a general permit is located within a larger pollutant management area established under an individual permit issued to the same person, the point of compliance is the applica-

ble point of compliance established in the individual permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A303. Renewal of a Discharge Authorization

A. Unless a Discharge Authorization under a general permit is transferred, revoked, or expired, a person may discharge under the general permit for the authorization period as specified by the permit type, including any closure activities required by a specific general permit.

B. An authorization to discharge under a Type 1 or Type 4 General Permit is valid for the operational life of the facility.

C. A permittee authorized under a Type 2 or Type 3 General Permit shall submit an application for renewal on a form provided by the Department with the applicable fee established in 18 A.A.C. 14 at least 30 days before the end of the renewal period.
1. The following are the renewal periods for Type 2 and Type 3 General Permit Discharge Authorizations:
   a. 2.01 General Permit, five years;
   b. 2.02 General Permit, seven years;
   c. 2.03 General Permit, two years;
   d. 2.04 General Permit, five years;
   e. 2.05 General Permit, five years;
   f. 2.06 General Permit, five years; and
   g. Type 3 General Permits, five years.
2. The renewal period for coverage under a Type 2 General Permit begins on the date the Department receives the Notice of Intent to Discharge.
3. The renewal period for coverage under a Type 3 General Permit begins on the date the Director issues the written Discharge Authorization.

D. If the Discharge Authorization is not renewed within the renewal period specified in subsection (C)(1), the Discharge Authorization expires.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A304. Notice of Transfer

A. Transfer of authorization under a Type 1 General Permit.
1. A permittee transferring ownership of a facility covered by a Type 1.01 through 1.08, or 1.10 through 1.12 General Permit is not required to notify the Department of the transfer.
2. A permittee transferring ownership of an on-site wastewater treatment facility operating under a Type 1.09 General Permit shall follow the requirements under R18-9-A316.
3. A permittee transferring ownership of a sewage treatment facility operating under a Type 1.09 General Permit shall submit a Notice of Transfer to the Department by certified mail within 15 days after the date that ownership changes.

B. Transfer of authorization under a Type 2, 3, or 4.01 General Permit.
1. If a change of ownership occurs for a facility covered by a Type 2, 3, or 4.01 General Permit facility, the permittee shall provide a Notice of Transfer to the Department or to the health or environmental agency delegated by the Director to administer Type 4.01 General Permits, by certified mail within 15 days after the date that ownership changes. The Notice of Transfer, on a form approved by the Department, shall include:
   a. Any information that has changed from the original Notice of Intent to Discharge,
   b. Any other transfer requirements specified for the general permit, and
   c. The applicable fee established in 18 A.A.C. 14.
2. The Department may require a permittee covered by a Type 2, 3, or Type 4.01 General Permit to submit a new Notice of Intent to Discharge and to obtain a new authorization under R18-9-A301(A)(2), (3) and (4), as applicable, if the volume or characteristics of the discharge have changed from the original application.

C. Transfer of a Type 4.02 through 4.23 General Permit. A permittee transferring ownership of an on-site wastewater treatment facility operating under one or more Type 4.02 through 4.23 General Permits shall follow the requirements under R18-9-A316.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A305. Facility Expansion

A. A permittee may expand a facility covered by a Type 2 General Permit if, before the expansion, the permittee provides the Department with the following information by certified mail:
1. An updated Notice of Intent to Discharge,
2. A certification signed by the facility owner stating that the expansion continues to meet all the conditions of the applicable general permit, and
3. The applicable fee established under 18 A.A.C. 14.

B. A permittee may expand a facility covered by a Type 3 or Type 4 General Permit if the permittee submits a new Notice of Intent to Discharge and the Department issues a new Discharge Authorization.
1. The person submitting the Notice of Intent to Discharge for the expansion may reference the previous Notice of Intent to Discharge if the previous information is identical, but shall provide full and detailed information for any changed items.
2. The Notice of Intent to Discharge shall include:
   a. Any applicable fee established under 18 A.A.C. 14, and
   b. A certification signed by the facility owner stating that the expansion continues to meet all of the requirements relating to the applicable general permit.
3. Upon receiving the Notice of Intent to Discharge, the Department shall follow the applicable review and authorization procedures described in R18-9-A301(A)(3) or (4).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A306. Closure

A. To satisfy the requirements under A.R.S. § 49-252, a permittee shall close a facility authorized to discharge under a general permit as follows:
1. If the discharge is authorized under a Type 1.01 through 1.08, 1.10, 1.11, 2.05, 2.06, or 4.01 General Permit, closure notification is unnecessary and clean closure is met when:
   a. The permittee removes material that may contribute to a continued discharge; and
   b. The permittee eliminates, to the greatest degree practical, any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance;
2. For a discharge authorized under a Type 2.02, 3.02, 3.05 through 3.07, or 4.23 General Permit, the facility meets clean closure requirements if the permittee provides notice and submits sufficient information for the Department to determine that:
   a. Any material that may contribute to a continued discharge is removed;
   b. The permittee has eliminated to the greatest degree practicable any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance; and
   c. Closure requirements, if any, established in the general permit are met;
3. If the discharge is authorized under a Type 1.12, 2.01, 2.03, 2.04, 3.01, 3.03, or 3.04 General Permit, the permittee shall comply with the closure requirements in the general permit;
4. If the discharge is from an on-site wastewater treatment facility authorized under a Type 1.09 or 4.02 through 4.22 General Permit, the permittee shall comply with the closure requirements in R18-9-A309(D); and
5. If the discharge is from a sewage treatment facility authorized under a Type 1.09 General Permit, the permittee shall comply with the closure requirements under subsection (A)(1).

B. For a facility operating under a general permit and located at a site where an individual area-wide permit has been issued, a permittee may defer some or all closure activities required by this subsection if the Director approves the deferral in writing. The permittee shall complete closure activities no later than the date that closure activities identified in the individual area-wide permit are performed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A307. Revocation of Coverage Under a General Permit

A. After notice and opportunity for a hearing, the Director may revoke coverage under a general permit and require the permittee to obtain an individual permit for any of the following:
1. The permittee fails to comply with the terms of the general permit as described in this Article, or
2. The discharge activity conducted under the terms of the general permit causes or contributes to the violation of an Aquifer Water Quality Standard at the applicable point of compliance.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative discharge of the facilities has violated or will violate an Aquifer Water Quality Standard established under A.R.S. §§ 49-221 and 49-223. Unless the public health or safety is jeopardized, the Director may allow continuation of a discharge until the Department:
1. Issues a single individual permit,
2. Authorizes a discharge under another general permit, or
3. Consolidates the discharges authorized under the general permits by following R18-9-107.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit allowing the discharge is automatically revoked upon issuance of the individual permit and notification under subsection (E) is not required.

D. If the Director revokes coverage under a general permit, the facility shall not discharge unless allowed under subsection (B) or under an individual permit.

E. If coverage under the general permit is revoked under subsections (A) or (B), the Director shall notify the permittee by certified mail of the decision. The notification shall include:
1. A brief statement of the reason for the decision;
2. The effective revocation date of the general permit coverage;
3. A statement of whether the discharge shall cease or whether the discharge may continue under the terms of revocation in subsection (B);
4. Whether the Director requires a person to obtain an individual permit, and if so:
   a. An individual permit application form, and
   b. Identification of a deadline between 90 and 180 days after receipt of the notification for filing the application;
5. The applicant's right to appeal the revocation, the number of days the applicant has to file an appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
6. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A308. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Repealed by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A309. General Provisions for On-site Wastewater Treatment Facilities

A. General requirements and prohibitions.
1. No person shall discharge sewage or wastewater that contains sewage from an on-site wastewater treatment facility except under an Aquifer Protection Permit issued by the Director.

2. A person shall not install, allow to be installed, or maintain a connection between any part of an on-site wastewater treatment facility and a drinking water system or supply so that sewage or wastewater contaminates the drinking water.
3. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from an on-site wastewater treatment facility.
4. A person shall not use a cesspool for sewage disposal.
5. A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if either (a) or (b) apply:
   a. One of the following applies:
      i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
      ii. A county, municipal, or sanitary district ordinance requires connection; or
      iii. The on-site wastewater treatment facility is located within an area identified for connection to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or
   b. A sewer service line extension is available at the property boundary and both of the following apply:
      i. The service connection fee is not more than $6000 for a dwelling or $10 times the daily design flow in gallons for a source other than a dwelling, and
      ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than $3000 for a dwelling or $5 times the daily design flow in gallons for a source other than a dwelling.
6. The Department shall prohibit installation of an on-site wastewater treatment facility if the installation will create an unsanitary condition or environmental nuisance or cause or contribute to a violation of an Aquifer Water Quality Standard.
7. A person shall design and operate the permitted on-site wastewater treatment facility so that:
   a. Flows to the facility consist of typical sewage and do not include any motor oil, gasoline, paint, varnish, solvent, pesticide, fertilizer, or other material not generally associated with toilet flushing, food preparation, laundry, or personal hygiene;
   b. Flows to the facility from commercial operations do not contain hazardous wastes as defined under A.R.S. § 49921(5) or hazardous substances;
   c. If the sewage contains a component of nonresidential flow such as food preparation, laundry service, or other source, the sewage is adequately pretreated by an interceptor that complies with R18-9-A315 or another device authorized by a general permit or approved by the Department under R18-9-A312(G);
   d. Except as provided in subsection (A)(7)(c), a sewage flow that does not meet the numerical levels for typical sewage is adequately pretreated to meet the numerical levels before entry into an on-site wastewater treatment facility authorized by this Article;
   e. Flow to the facility does not exceed the design flow specified in the Discharge Authorization;
   f. The facility does not create an unsanitary condition or environmental nuisance, or cause or contribute to a violation of either a Aquifer Water Quality Standard or a Surface Water Quality Standard; and
   g. Activities at the site do not adversely affect the operation of the facility.
8. A person shall control the discharge of total nitrogen from an on-site wastewater treatment facility as follows:
   a. For an on-site wastewater treatment facility operating under the 1.09 General Permit or proposed for construction in a Notice of Intent to Discharge under a Type 4 General Permit and the facility is located within a Nitrogen Management Area, the provisions of R18-9-A317(D) apply;
   b. For an on-site wastewater treatment facility proposed for construction in a Notice of Intent to Discharge under R18-9-E323, the provisions of R18-9-E323(A)(4) apply;
   c. For a subdivision proposed under 18 A.A.C. 5, Article 4, for which on-site wastewater treatment facilities are used for sewage disposal, the permittee shall demonstrate in the geological report required in R18-5-408(E)(1) that total nitrogen loading from the on-site wastewater treatment facilities to groundwater is controlled by providing one of the following:
      i. For a subdivision platted for a single family dwelling on each lot, calculations that demonstrate that the number of lots within the subdivision does not exceed the number of acres contained within the boundaries of the subdivision;
      ii. For a subdivision platted for dwellings that do not meet the criteria specified in subsection (A)(8)(c)(i), calculations that demonstrate that the nitrogen loading over the total area of the subdivision is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the active treatment of the disposal fields, based on a total nitrogen contribution to raw sewage of 0.0333 pounds (15.0 grams) of total nitrogen per day per person; or
      iii. An analysis by another means of demonstration showing that the nitrogen loading to the aquifer due to on-site wastewater treatment facilities within the subdivision does not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate at the applicable point of compliance.
9. Repairs and Routine Work.
   a. A Notice of Intent to Discharge is not required for repair or routine work that maintains a facility.
   b. A Notice of Intent to Discharge is required for the following non-routine work or repairs:
      i. Converting a facility from operation under gravity to one requiring a pump or other mechanical device for treatment or disposal;
      ii. Modifying or replacing a treatment works or disposal works, as defined in R18-9-101; or

iii. Modifying a facility in any manner that is inconsistent with the originally approved design and installation of the facility.

c. A permittee shall comply with any local ordinance that provides independent permitting requirements for repair or routine work.

d. A person, as defined in R18-9-101, shall not modify the facility so as to create an unsanitary condition or environmental nuisance or cause or contribute to an exceedance of a water quality standard.

10. Cumulative flows. When there is more than one on-site wastewater treatment facility on a property or on a site under common ownership or subject to a larger plan of sale or development, the Director shall determine whether an individual permit is required or whether the applicant qualifies for coverage to discharge under a general permit based on the sum of the design flows from the proposed installation and existing on-site wastewater treatment facilities on the property or site.
    a. If the sum of the design flows is less than 3000 gallons per day, the Department will process the application under R18-9-E302 through R18-9-E322, as applicable.
    b. If the sum of the design flows is equal to or more than 3000 gallons per day but less than 24,000 gallons per day, the Department will process the application under R18-9-E323.
    c. If the sum of the design flows is equal to or more than 24,000 gallons per day, the project does not qualify for coverage under a Type 4 General Permit and the applicant shall submit an application for an individual permit under Article 2 of this Chapter.
11. The use of a gray water system does not change the design, capacity, or reserve area requirements for an on-site wastewater treatment facility regulated under R18-9-E302 through R18-9-E323. The design of an on-site facility shall ensure the on-site facility can treat and dispose of the combined black water and gray water flows generated at the site. Black water includes wastewater flows from a kitchen sink. Kitchen sink wastewater flows are not gray water. Kitchen sink wastewater flows are not gray water even if a holding tank receiving kitchen sink wastewater, such as a recreational vehicle holding tank, is labeled as holding gray water. Gray water, as defined in R18-9-101, may be utilized in accordance with Article 7 of this Chapter.
12. To obtain coverage under a Type 4 General Permit, an applicant must, in the following order:
    a. Submit a Notice of Intent to Discharge according to requirements in R18-9-A301(B), R18-9-A309(B), and according to permit-specific requirements in Part E of Article 3,
    b. Receive a Construction Authorization from the Director pursuant to R18-9-A301(D)(1)),
    c. Submit a Request for Discharge Authorization according to requirements in R18-9-A301(D)(1)(f), R18-9-A309(C), and according to permit-specific requirements in Part E of Article 3, and
    d. Receive a Discharge Authorization from the Director pursuant to R18-9-A301(D)(2) and R18-9-A309(C).

B. Notice of Intent to Discharge under a Type 4 General Permit. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information in a format approved by the Department:

1. A site investigation report that summarizes the results of the site investigation conducted under R18-9-A310(B), including:
    a. Results from any soil evaluation, percolation test, or seepage pit performance test;
    b. Any surface limiting condition identified in R18-9-A310(C)(2); and
    c. Any subsurface limiting condition identified in R18-9-A310(D)(2);
2. A site plan that includes:
    a. The parcel and lot number, if applicable, the property address or other appropriate legal description, the property size in acres, and the boundaries of the property;
    b. A plan of the site drawn to scale, dimensioned, and with a north arrow that shows:
        i. Proposed and existing on-site wastewater treatment facilities; dwellings and other buildings; driveways, swimming pools, tennis courts, wells, ponds, and any other paved, concrete, or water feature; down slopes and cut banks with a slope greater than 15 percent; retaining walls; and any other constructed feature that affects proper location, design, construction, or operation of the facility;
        ii. Any feature less than 200 feet from the on-site wastewater treatment facility excavation and reserve area that constrains the location of the on-site wastewater treatment facility because of setback limitations specified in R18-9-A312(C);
        iii. Topography, delineated with an appropriate contour interval, showing original and post-installation grades;
        iv. Drainage patterns, and as applicable, drainage controls and erosion protection for the facility;
        v. Location and identification of the treatment and disposal works and wastewater pipelines, the reserve disposal area, and location and identification of all sites of percolation testing and soil evaluation performed under R18-9-A310; and
        vi. Location of any public sewer if 400 feet or less from the property line;
3. The design flow of the on-site wastewater treatment facility, consisting of gray water and black water flows, expressed in gallons per day based on Table 1, Unit Design Flows, the expected strength of the wastewater if the strength exceeds the levels for typical sewage, and:
    a. For a single family dwelling, a list of the number of bedrooms and plumbing fixtures and corresponding unit flows used to calculate the design flow of the facility; and
    b. For a dwelling other than for a single family, a list of each wastewater source and corresponding unit flows used to calculate the design flow of the facility;
4. A list of materials, components, and equipment for constructing the on-site wastewater treatment facility;
5. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department;

6. If pretreatment is necessary for a facility to comply with the requirements of this Chapter, including R18-9-A309(A)(7), then a design report approved by the on-site wastewater treatment facility manufacturer or manufacturers that specifies component capacities, control settings, and supplemental installation and operation practices necessary to produce typical sewage numerical levels before entry into an on-site wastewater treatment facility; and
7. For a facility that includes treatment or disposal works permitted under R18-9-E303 through R18-9-E323:
   a. Construction quality drawings that show the following:
      i. Systems, subsystems, and key components, including manufacturer's name, model number, and associated construction notes and inspection milestones, as applicable;
      ii. A title block, including facility owner, revision date, space for addition of the Department's application number, and page numbers;
      iii. A plan and profile with the elevations of wastewater pipelines, and treatment and disposal components, including calculations justifying the absorption area, to allow Department verification of hydraulic and performance characteristics;
      iv. Cross sections showing wastewater pipelines, construction details and elevations of treatment and disposal components, original and finished grades of the land surface, seasonal high water table if less than 10 feet below the bottom of a disposal works or 60 feet below the bottom of a seepage pit, and a soil elevation evaluation to allow Department verification of installation design and performance; and
   b. A draft operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;

C. Additional requirements for a Request for Discharge Authorization and for the issuance of a Discharge Authorization under a Type 4 General Permit.
1. If the entire on-site wastewater treatment facility, including treatment works and disposal works, will be permitted under R18-9-E302, the Director shall issue the Discharge Authorization if, as a part of the Request for Discharge Authorization:
   a. The site plan accurately reflects the final location and configuration of the components of the treatment and disposal works, and
   b. The applicant or the applicant's agent certifies on the Request for Discharge Authorization form that the septic tank passed the watertightness test required by R18-9-A314(5)(d).
2. If the on-site wastewater treatment facility is proposed under R18-9-E303 through R18-9-E323, either separately or in any combination with each other or with R18-9-E302, the Director shall issue the Discharge Authorization if the following documents are submitted to the Department as part of the Request for Discharge Authorization:
   a. As-built plans showing changes from construction quality drawings submitted under subsection (B)(6)(a);
   b. A final list of equipment and materials showing changes from the list submitted under subsection (B)(4);
   c. A final operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;
   d. A certification that a service contract for ensuring that the facility is operated and maintained to meet the performance and other requirements of the applicable general permits exists for at least one year following the beginning of the operation of the on-site wastewater treatment facility, including the name of the service provider, if the on-site wastewater treatment facility is permitted under:
      i. R18-9-E304;
      ii. R18-9-E308 through R18-9-E315;
      iii. R18-9-E316, if the facility includes a pump; or
      iv. R18-9-E318 through R18-9-E322;
   e. Other documents, if required by the separate general permits in 18 A.A.C. 9, Article 3, Part E;
   f. A Certificate of Completion signed by the current engineer or designer of record assuring that installation of the facility conforms to the design approved under the Construction Authorization under R18-9-A301(D)(1)(c); and a regulatory representative, such as an inspector, may not act as an applicant's agent, nor authorize backfill before the current engineer or designer of record has verified proper installation of the system;
   g. The name of the installation contractor and the Registrar of Contractor's license number issued to the installation contractor; and
   h. A certification that any septic tank installed as a component of the on-site wastewater treatment facility passed the watertightness test required by R18-9-A314(5)(d).
3. The Director shall specify in the Discharge Authorization:
   a. The permitted design flow of the facility,
   b. The characteristics of the wastewater sources contributing to the facility, and
   c. A list of the documents submitted to and reviewed by the Department satisfying subsection (C)(2).

D. Closure requirements. A person who permanently discontinues use of an on-site wastewater treatment facility or a cesspool, or is ordered by the Director to close an abandoned facility shall:
1. Remove all sewage from the facility and dispose of the sewage in a lawful manner;
2. Disconnect and remove electrical and mechanical components;
3. Remove or collapse the top of any tank or containment structure.
   a. Punch a hole in the bottom of the tank or containment structure if the bottom is below the seasonal high groundwater table;
   b. Fill the tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material; and
   c. Regrade the surface to provide drainage away from the closed area;
4. Cut and plug both ends of the abandoned sewer drain pipe between the building and the on-site wastewater treat-

ment facility not more than 5 feet outside the building foundation if practical, or cut and plug as close to each end as possible; and

5. Notify the Department within 30 days of closure.

E. Proprietary and other reviewed products.

1. The Department shall maintain a list of proprietary and other reviewed products that may be used for on-site wastewater treatment facilities to comply with the requirements of this Article. The list shall include appropriate information on the applicability and limitations of each product.
2. The list of proprietary and other reviewed products may include manufactured systems, subsystems, or components within the treatment works and disposal works if the products significantly contribute to the treatment performance of the system or provide the means to overcome site limitations. The Department will not list septic tanks, effluent filters or components that do not significantly affect treatment performance or provide the means to overcome site limitations.
3. A person may request that the Department add a product to the list of proprietary and other reviewed products. The request may include a proposed reference design for review. The Department shall ensure that performance values in the list reflect the treatment performance for defined wastewater characteristics. The Department shall assess fees under 18 A.A.C. 14 for product review.

F. Recordkeeping. A permittee authorized to discharge under one or more Type 4 General Permits shall maintain the Discharge Authorization and associated documents for the life of the facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A310. Site Investigation for Type 4 On-site Wastewater Treatment Facilities

A. Definition. For purposes of this Section, "clean water" means water free of colloidal material or additives that could affect chemical or physical properties if the water is used for percolation or seepage pit performance testing.

B. Site investigation. An applicant shall ensure that an investigator qualified under subsection (H) conducts a site investigation consisting of a surface characterization under subsection (C) and a subsurface characterization under subsection (D). The applicant shall submit the results in a format prescribed by the Department. The site investigation shall provide sufficient data to:

1. Select appropriate primary and reserve disposal areas for an on-site wastewater treatment facility considering all surface and subsurface limiting conditions in subsections (C)(2) and (D)(2); and;
2. Effectively design and install the selected facility to serve the anticipated development at the site, whether or not limiting conditions exist.

C. Surface characterization.

1. Surface characterization method. The investigator shall characterize the surface of the site where an on-site wastewater treatment facility is proposed for installation using one of the following methods:
   a. The "Standard Practice for Surface Site Characterization for On-site Septic Systems, D5879-95 (2003)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   b. Another method of surface characterization that can, with accuracy and reliability, identify and delineate the surface limiting conditions specified in subsection (C)(2).
2. Surface limiting conditions. The investigator shall determine whether, and if so, where any of the following surface limiting conditions exist:
   a. The surface slope is greater than 15 percent at the intended location of the on-site wastewater treatment facility;
   b. Minimum setback distances are not within the limits specified in R18-9-A312(C);
   c. Surface drainage characteristics at the intended location of the on-site wastewater treatment facility will adversely affect the ability of the facility to function properly;
   d. A 100-year flood hazard zone, as indicated on the applicable flood insurance rate map, is located within the property on which the on-site wastewater treatment facility will be installed, and the flood hazard zone may adversely affect the ability of the facility to function properly;
   e. An outcropping of rock that cannot be excavated exists in the intended location of the on-site wastewater treatment facility or will impair the function of soil receiving the discharge; and
   f. Fill material deposits exist in the intended location of the on-site wastewater treatment facility.

D. Subsurface characterization.

1. Subsurface characterization method. The investigator shall characterize the subsurface of the site where an on-site wastewater treatment facility is proposed for installation using one or more of the following methods:
   a. The following ASTM standard practice, which is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959: "Standard Practice for Subsurface Site Characterization of Test Pits for On-site Septic Systems, D5921-96(2003)e1 (2003)," published by the American Society for Testing and Materials;
   b. Percolation testing as specified in subsection (F);
   c. Seepage pit performance testing as specified in subsection (G); or
   d. Another method of subsurface characterization, approved by the Department, that ensures compli-

ance with water quality standards through proper system location, selection, design, installation, and operation.

2. Subsurface limiting conditions. The investigator shall determine whether any of the following limiting conditions exist in the primary and reserve areas of the on-site wastewater treatment facility within a minimum of 12 feet of the land surface or to an impervious soil or rock layer if encountered at a shallower depth:
   a. The soil absorption rate determined under R18-9-A312(D)(2) is:
      i. More than 1.20 gallons per day per square foot, or
      ii. Less than 0.20 gallons per day per square foot;
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation specified in R18-9-A312(E)(1);
   c. Seasonal saturation occurs within surface soils that could affect the performance of the on-site wastewater treatment facility;
   d. One of the following subsurface conditions that may cause or contribute to the surfacing of wastewater:
      i. An impervious soil or rock layer,
      ii. A zone of saturation that substantially limits downward percolation from the disposal works,
      iii. Soil with more than 50 percent rock fragments;
   e. One of the following subsurface conditions that promotes accelerated downward movement of insufficiently treated wastewater:
      i. Fractures or joints in rock that are open, continuous, or interconnected;
      ii. Karst voids or channels; or
      iii. Highly permeable materials such as deposits of cobbles or boulders; or
   f. A subsurface condition that may convey wastewater to a water of the state and cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4.
3. Applicability of subsurface characterization methods. The investigator shall:
   a. For a seepage pit constructed under R18-9-E302, test seepage pit performance using the procedure specified in subsection (G);
   b. For an on-site wastewater treatment facility other than a seepage pit, characterize soil by using the ASTM method specified in subsection (D)(1)(a) if any of the following site conditions exists:
      i. The natural surface slope at the intended location of the on-site wastewater treatment facility is greater than 15 percent;
      ii. Bedrock or similar consolidated rock formation that cannot be excavated with a shovel outcrops on the property or occurs less than 12 feet below the land surface;
      iii. The native soil at the surface or encountered in a boring, trench, or hole consists of more than 35 percent rock fragments;
      iv. The seasonal high water table occurs within 12 feet of the natural land surface as encountered in trenches or borings, or evidenced by well records or hydrologic reports;
      v. Seasonal saturation at the natural land surface occurs as indicated by soil mottling, vegetation adapted to near-surface saturated soils, or springs, seeps, or surface water near enough to the intended location of the on-site wastewater treatment facility to have a connection with potential seasonal saturation at the land surface; or
      vi. A percolation test yields results outside the limits specified in subsection (D)(2)(a) and (b).
   c. Percolation testing. The investigator may perform percolation testing as specified in subsection (F):
      i. To augment another method of subsurface characterization if useful to locate or design an on-site wastewater treatment facility, or
      ii. As the sole method of subsurface characterization if a subsurface characterization by an ASTM method is not required under subsection (D)(3)(b).

E. If an ASTM method is used for subsurface characterization, the investigator shall conduct subsurface characterization tests at the site to provide adequate, credible, and representative information to ensure proper location, selection, design, and installation of the on-site wastewater treatment facility. The investigator shall:
1. Select at least two test locations in the primary area and one test location in the reserve area to conduct the tests;
2. Perform the characterization at each test location at appropriate depths to:
   a. Establish the wastewater absorption capacity of the soil under R18-9-A312(D), and
   b. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment; and
3. Submit with the site investigation report:
   a. A log of soil formations for each test location with information on soil type, texture, and classification; percentage of rock; structure; consistence; and mottles;
   b. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
   c. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(b), sufficient to allow location and design of the on-site wastewater treatment facility.

F. Percolation testing method for subsurface characterization.
1. Planning and preparation. The investigator shall:
   a. Select at least two locations in the primary area and at least one location in the reserve area for percolation testing, to provide adequate and credible information to ensure proper location, selection, design, and installation of a properly working on-site wastewater treatment facility;
   b. Perform percolation testing at each location at intervals in the soil profile sufficient to:
      i. Establish the wastewater absorption capability of the soil under R18-9-A312(D), and
      ii. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment. The investigator shall perform percolation tests at multiple depths if there is an indication of an obvious change in soil characteristics that affect the location, selection,

design, installation, or disposal performance of the on-site wastewater treatment facility;

c. Excavate percolation test holes in undisturbed soil at least 12 inches deep with dimensions of 12 inches by 12 inches, if square, or a diameter of 15 inches, if round. The investigator shall not alter the structure of the soil during the excavation;

d. Place percolation test holes away from site or soil features that yield unrepresentative or misleading data pertaining to the location, selection, design, installation, or performance of the on-site wastewater treatment facility;

e. Scarify smeared soil surfaces within the percolation test holes and remove any loosened materials from the bottom of the hole; and

f. Use buckets with holes in the sides to support the sidewalls of the percolation test hole, if necessary. The investigator shall fill any voids between the walls of the hole and the bucket with pea gravel to reduce the impact of the enlarged hole.

2. Presoaking procedure. The investigator shall:

a. Fill the percolation test hole with clean water to a depth of 12 inches above the bottom of the hole;

b. Observe the decline of the water level in the hole and record time in minutes for the water to completely drain away;

c. Repeat the steps specified in subsection (F)(2)(a) and (b) if the water drains away in less than 60 minutes.

i. If the water drains away the second time in less than 60 minutes, the investigator shall repeat the steps specified in subsections (F)(2)(a) and (b).

ii. If the water drains away a third time in less than 60 minutes, the investigator shall perform the percolation test by following subsection (F)(3); and

d. Add clean water to the hole after 60 minutes and maintain the water at a minimum depth of 9 inches for at least four more hours if it takes 60 minutes or longer for the water to drain away. The investigator shall protect the hole from precipitation and runoff, and perform the percolation test specified in subsection (F)(3) between 16 and 24 hours after presoaking.

3. Conducting the test. The investigator shall:

a. Conduct the percolation test before soil hydraulic conditions established by the presoaking procedure substantially change. The investigator shall remove loose materials in the percolation test hole to ensure that the specified dimensions of the hole are maintained and the infiltration surfaces are undisturbed native soil;

b. Fill the test hole to a depth of six inches above the bottom with clean water;

c. Observe the decline of the water level in the test hole and record the time in minutes for the water level to fall exactly 1 inch from a fixed reference point. The investigator shall:

i. Immediately refill the hole with clean water to a depth of 6 inches above the bottom, and determine and record the time in minutes for the water level to fall exactly 1 inch,

ii. Refill the hole again with clean water to a depth of 6 inches above the bottom and determine and record the time in minutes for the water to fall exactly 1 inch, and

iii. Ensure that the method for measuring water level depth is accurate and does not significantly affect the percolation rate of the test hole;

d. If the percolation rate stabilizes for three consecutive measurements by varying no more than 10 percent, use the highest percolation rate value of the three measurements. If three consecutive measurements indicate that the percolation rate results are not stabilizing or the percolation rate is between 60 and 120 minutes per inch, the investigator shall use an alternate method based on a graphical solution of the test data to approximate the stabilized percolation rate;

e. Record the percolation rate results in minutes per inch; and

f. Submit the following information with the site investigation report:

i. A log of the soil formations encountered for all percolation tests including information on texture, structure, consistence, percentage of rock fragments, and mottles, if present;

ii. Whether and which test hole was reinforced with a bucket;

iii. The locations, depths, and bottom elevations of the percolation test holes on the site investigation map;

iv. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and

v. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(a), sufficient to allow location and design of the on-site wastewater treatment facility.

G. Seepage pit performance testing method for subsurface characterization. The investigator shall test seepage pits described in R18-9-E302 as follows:

1. Planning and Preparation. The investigator shall:

a. Identify the disposal areas at the site and drill a test hole at least 18 inches in diameter to the depth of the proposed seepage pit, at least 30 feet deep, and

b. Scarify soil surfaces within the test hole and remove loosened materials from the bottom of the hole.

2. Presoaking procedure. The investigator shall:

a. Fill the bottom 6 inches of the test hole with gravel, if necessary, to prevent scouring;

b. Fill the test hole with clean water up to 3 feet below the land surface;

c. Observe the decline of the water level in the hole and determine the time in hours and minutes for the water to completely drain away;

d. Repeat the procedure if the water drains away in less than four hours; If the water drains away the second time in less than four hours, the investigator shall conduct the seepage pit performance test by following subsection (G)(3);

e. Add water to the hole and maintain the water at a depth that leaves at least the top 3 feet of hole

exposed to air for at least four more hours if the water drains away in four or more hours; and

f. Not remove the water from the hole before the seepage pit performance test if there is standing water in the hole after at least 16 hours of presoaking.

3. Conducting the test. The investigator shall:
   a. Fill the test hole with clean water up to 3 feet below land surface;
   b. Observe the decline of the water level in the hole and determine and record the vertical distance to the water level from a fixed reference point every 10 minutes. The investigator shall ensure that the method for measuring water level depth is accurate and does not significantly affect the rate of fall of the water level in the test hole;
   c. Measure the decline of the water level continually until three consecutive 10-minute measurements indicate that the infiltration rates are within 10 percent. If measurements indicate that infiltration is not approaching a steady rate or if the rate is close to a numerical limit specified in R18-9-A312(E)(1), the investigator shall use, an alternate method based on a graphical solution of the test data to approximate the final stabilized infiltration rate;
   d. Percolation test rate. Calculate the stabilized infiltration rate for a seepage pit determined by the test hole procedure specified in subsection (G)(1)(a) using the formula P = (15 / DS) x IS to determine an equivalent percolation test rate. Once "P" is determined, the investigator shall use R18-9-A312(D)(2)(a) to establish the design SAR for wastewater treated under R18-9-E302 and to calculate the required minimum sidewall area for the seepage pit using the equation specified in R18-9-E302(C)(5)(k).
      i. "P" is the percolation test rate (minutes per inch) tabulated in the first column of the table in R18-9-A312(D)(2)(a),
      ii. "DS" is the diameter of the seepage pit test hole in inches, and
      iii. "IS" is the seepage pit stabilized infiltration rate (minutes per inch) determined by the procedure specified in R18-9-A310(G)(3)(c);
   e. Submit the following information with the site investigation report:
      i. The results of the seepage pit performance testing including data, calculations, and findings on a form provided by the Department;
      ii. The log of the test hole indicating lithologic characteristics and points of change;
      iii. The location of the test hole on the site investigation map;
      iv. A determination of depth to groundwater below the land surface by borings, published groundwater data, subdivision reports, or relevant well data.
   f. Fill the test hole so that groundwater quality and public safety are not compromised if the seepage pit is drilled elsewhere or if a seepage pit cannot be sited at the location because of unfavorable test results.

H. Qualifications. An investigator shall not perform a site investigation under this Section unless the investigator has knowledge and competence in the subject area and is licensed in good standing or otherwise qualified in one of the following categories:

1. Arizona-registered professional engineer,
2. Arizona-registered geologist,
3. Arizona-registered sanitarian,
4. A certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section, or
5. Qualifies under another category designated in writing by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A311. Facility Selection for Type 4 On-site Wastewater Treatment Facilities

A. A person shall select, design, and install an on-site wastewater treatment facility that is appropriate for the site's geographic location, setback limitations, slope, topography, drainage and soil characteristics, wastewater infiltration capability, depth to the seasonal high water table, and any surface or subsurface limiting condition.

1. A person may use on-site treatment and disposal technologies covered by a Type 4 General Permit alone or in combination with another Type 4 General Permit to overcome site limitations.
2. An applicant may submit a single Notice of Intent to Discharge for an on-site wastewater treatment facility consisting of components or technologies covered by multiple general permits if the information submittal requirements of all the general permits are met.
3. The Director shall issue a single Construction Authorization under R18-9-A301(D)(1) and a single Discharge Authorization under R18-9-A301(D)(2) for an on-site wastewater treatment facility that consists of components or technologies covered by multiple general permits.
4. If either a septic tank or disposal method, or both, as identified in R18-9-E302, is appropriately used in combination with an alternative technology listed under R18-9-E303 through R18-9-E322, the applicant shall apply the design requirements specified in R18-9-E302, except that the specific requirements for R18-9-E303 through R18-9-E323, as applicable, supersede requirements in R18-9-E302 if the rules conflict. If additional modifications are necessary and appropriate to ensure adequate treatment, the applicant may request review under R18-9-A312(G) to allow the Department to approve the application.

B. A person may install a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a site if the site investigation conducted under R18-9-A310 indicates that no limiting condition identified under R18-9-A310(C) or R18-9-A310(D) exists at the site.

1. A person may install a seepage pit only in valley-fill sediments in a basin-and-range alluvial basin and only if the seepage pit performance test results meet the criteria specified in R18-9-A312(E).
2. The person shall specify in the Notice of Intent to Discharge that no limiting conditions described in R18-9-A310(C) and (D) were identified at the site.

C. If any surface or subsurface limiting condition is identified in the site investigation report, an applicant may propose installation of a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a facility only if:
1. The applicant submits information under R18-9-A312(G) that describes:
   a. How the design of the septic tank and disposal works system specified in R18-9-E302 was modified to overcome limiting conditions;
   b. How the modified design meets the criteria of R18-9-A312(G)(3); and
   c. A site-specific SAR under R18-9-A312(D)(2)(a) or (b), as applicable; and
2. None of the following surface or subsurface limiting conditions are identified at the site:
   a. An outcropping of rock that cannot be excavated or will impair the function of soil receiving the discharge exists in the intended location of the on-site wastewater treatment facility, as described in R18-9-A310(C)(2)(e);
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation distance, as described in R18-9-A310(D)(2)(b); or
   c. A subsurface condition that promotes accelerated downward movement of insufficiently treated wastewater as described in R18-9-A310(D)(2)(e).

D. If a site can accommodate a septic tank and disposal works system described in R18-9-E302, the applicant shall not install a treatment works or disposal works described in R18-9-E303 through R18-9-E322 unless the applicant submits a statement to the Department with the Notice of Intent to Discharge acknowledging the following:
1. The applicant is aware that although a septic tank and disposal works system described in R18-9-E302 is appropriate for the site, the applicant desires to install a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322; and
2. The applicant is aware that a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322 may result in higher capital, operation, and maintenance costs than a septic tank and disposal works system described in R18-9-E302.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A312. Facility Design for Type 4 On-site Wastewater Treatment Facilities

A. General design requirements. An applicant shall ensure that the person designing an on-site wastewater treatment facility:
1. Signs the design documents submitted as part of the Notice of Intent to Discharge to obtain a Construction Authorization, including plans, specifications, drawings, reports, and calculations; and
2. Locates and designs the on-site wastewater treatment facility project using good design judgment and relies on appropriate design methods and calculations.

B. Design considerations and flow determination. An applicant shall ensure that the person designing the on-site wastewater treatment facility shall:
1. Design the facility to satisfy a 20-year operational life;
2. Design the facility based on the provisions of one or more of the general permits in R18-9-E302 through R18-9-E322 for facilities with a design flow of less than 3000 gallons per day, and R18-9-E323 for facilities with a design flow of 3000 gallons per day to less than 24,000 gallons per day;
3. Design the facility based on the facility's design flow and wastewater characteristics as specified in R18-9-A309(A)(7), (10) and (11) and R18-9-A309(B)(3);
4. For on-site wastewater treatment facilities permitted under R18-9-E303 through R18-9-E323, apply the following design requirements, as applicable:
   a. Include the power source and power components in construction drawings if electricity or another type of power is necessary for facility operation;
   b. If a hydraulic analysis is required under subsection (E), perform the analysis based on the location and dimensions of the bottom and sidewall surfaces of the disposal works that are identified in the design documentation;
   c. Design components, piping, ports, seals, and appurtenances to withstand installation loads, internal and external operational loads, and buoyant forces. Design ports for resistance against movement, and cap or cover openings for protection from damage and entry by rodents, mosquitoes, flies, or other organisms capable of transporting a disease-causing organism;
   d. Design tanks, liners, ports, seals, piping to and within the facility, and appurtenances for watertightness under all operational conditions;
   e. Provide adequate storage capacity above high operating level to:
      i. Accommodate a 24-hour power or pump outage, and
      ii. Contain wastewater that is incompletely treated or cannot be released by the disposal works to the native soil;
   f. If a fixed media process is used, provide in the construction drawings the media material, installation specification, media configuration, and wastewater loading rate of the media at the daily design flow;
   g. Provide a fail-safe wastewater control or operational process, if required by the general permit to prevent discharge of inadequately treated wastewater; and
   h. Reference design. If using a reference design on file with the Department, indicate the reference design within the information submitted with the Notice of Intent to Discharge.

C. Setbacks. The following setbacks apply unless the Department:
1. Specifies alternative setbacks under Article 3, Part E of this Chapter;
2. Approves a different setback under the procedure specified in subsection (G); or
3. Establishes a more stringent setback on a site- or area-specific basis to ensure compliance with water quality standards.

Features Requiring Setbacks	Setback For An On-Site Wastewater Treatment Facility, Including Reserve Area (In Feet)	Special Provisions
1. Building	10	Includes porches, decks (including pool decks), and steps (covered or uncovered), breezeways, roofed patios, carports, covered walks, and similar structures and appurtenances.
2. Property line shared with any adjoining lot or parcel not served by a common drinking water system* or an existing water well	50	A person may reduce the setback to a minimum of 5 feet from the property line if: a. The owners of any affected undeveloped adjacent properties agree, as evidenced by an appropriately recorded document, to limit the location of any new well on their property to at least 100 feet from the proposed treatment works and primary and reserve disposal works; and b. The arrangements and documentation are approved by the Department.
3. All other property lines	5	None
4. Public or private water supply well	100	None
5. Perennial or intermittent stream	100	Measured horizontally from the high water line of the peak streamflow from a 10-year, 24-hour rainfall event.
6. Lake, reservoir, or canal	100	Measured horizontally from the high water line from a 10-year, 24-hour rainfall event at the lake or reservoir and measured horizontally from the edge of the canal.
7. Drinking water intake from a surface water source (includes an open water body, downslope spring or a well tapping streamside saturated alluvium)	200	Measured horizontally from the on-site wastewater treatment facility to the structure or mechanism for withdrawing raw water such as a pipe inlet, grate, pump, intake or diversion box, spring box, well, or similar structure.
8. Wash or drainage easement with a drainage area of more than 20 acres	50	Measured horizontally from the nearest edge of the defined natural channel bank or drainage easement boundary. A person may reduce the setback to 25 feet if natural or constructed erosion protection is approved by the appropriate flood plain administrator.
9. Water main or branch water line	10	None
10. Domestic service water line (including domestic water holding tanks)	5	Measured horizontally between the water line and the wastewater pipe, except that the following are allowed: a. A water line may cross above a wastewater pipe if the crossing angle is between 45 and 90 degrees and the vertical separation distance is 1 foot or more. b. A water line may parallel a wastewater pipe with a horizontal separation distance of 1 foot to 5 feet if the bottom of the water line is 1 foot or more above the top of the wastewater pipe and is in a separate trench or on a bench in the same trench.

11. Downslopes or cut banks greater than 15 percent, culverts, and ditches from:		
a. Treatment works components	10	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface.
b. Trench, bed, chamber technology, or gravelless trench with:		Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
i. No limiting subsurface condition specified in R18-9-A310(D)(2),	20	
ii. A limiting subsurface condition.	50	
c. Subsurface drip lines.	3	Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
12. Driveway	5	Measured horizontally to the nearest edge of an on-site wastewater treatment facility excavation. A person may place a properly reinforced and protected wastewater treatment facility, except for disposal works, at any location relative to a driveway if access openings, risers, and covers carry the design load and are protected from inflow.
13. Swimming pool excavation	5	Except if soil loading or stability concerns indicate the need for a greater separation distance.
14. Easement (except drainage easement)	5	None
15. Earth fissures	100	None
* A "common drinking water system" means a system that currently serves or is under legal obligation to serve the property and may include a drinking water utility, a well-sharing agreement, or other viable water supply agreement.		

D. Soil absorption rate (SAR) and disposal works sizing.

1. An applicant shall determine the soil absorption area by dividing the design flow by the applicable soil absorption rate. If soil characterization and percolation test methods yield different SAR values or if multiple applications of the same approach yield different values, the designer of the disposal works shall use the lowest SAR value unless a higher SAR value is proposed and justified to the Department's satisfaction in the Notice of Intent to Discharge.
2. The SAR used to calculate disposal works size for systems described in R18-9-E302 is as follows:
   a. The SAR by percolation testing as described in R18-9-A310(F) or (G), as applicable, is determined as follows:

Percolation Rate from Percolation Test (minutes per inch)	**SAR, Trench, Chamber, and Pit (gal/day/ft^2)**	**SAR, Bed (gal/day/ft^2)**
Less than 1.00	A site-specific SAR is required	A site-specific SAR is required
1.00 to less than 3.00	1.20	0.93
3.00	1.10	0.73
4.00	1.00	0.67
5.00	0.90	0.60
7.00	0.75	0.50
10.0	0.63	0.42
15.0	0.50	0.33
20.0	0.44	0.29
25.0	0.40	0.27
30.0	0.36	0.24
35.0	0.33	0.22

40.0	0.31	0.21
45.0	0.29	0.20
50.0	0.28	0.19
55.0	0.27	0.18
55.0+ to 60.0	0.25	0.17
60.0+ to 120	0.20	0.13
Greater than 120	A site-specific SAR is required	A site-specific SAR is required

b. The SAR using the soil evaluation method described in R18-9-A310(E) is determined by answering the questions in the following table. The questions are read in sequence starting with "A." The first "yes" answer determines the SAR. A seepage pit is required to determine percolation rate under the procedure described in R18-9-A310(G) and would only use this table to augment the percolation test results, if appropriate.

Sequence of Soil Characteristics Questions	**SAR, Trench, Chamber, and Pit gal/day/ft^2**	**SAR, Bed gal/day/ft^2**
A. Is the horizon gravelly coarse sand or coarser?	A site-specific SAR is required	A site-specific SAR is required
B. Is the structure of the horizon moderate or strongly platy?	A site-specific SAR is required	A site-specific SAR is required
C. Is the texture of the horizon sandy clay loam, clay loam, silty clay loam, or finer and the soil structure weak platy?	A site-specific SAR is required	A site-specific SAR is required
D. Is the moist consistence stronger than firm or any cemented class?	A site-specific SAR is required	A site-specific SAR is required
E. Is the texture sandy clay, clay, or silty clay of high clay content and the structure massive or weak?	A site-specific SAR is required	A site-specific SAR is required
F. Is the texture sandy clay loam, clay loam, silty clay loam, or silt loam and the structure massive?	A site-specific SAR is required	A site-specific SAR is required
G. Is the texture of the horizon loam or sandy loam and the structure massive?	0.20	0.13
H. s the texture sandy clay, clay, or silty clay of low clay content and the structure moderate or strong?	0.20	0.13
I. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure weak?	0.20	0.13
J. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure moderate or strong?	0.40	0.27
K. Is the texture sandy loam, loam, or silty loam and the structure weak?	0.40	0.27
L. Is the texture sandy loam, loam, or silt loam and the structure moderate or strong?	0.60	0.40
M. Is the texture fine sand, very fine sand, loamy fine sand, or loamy very fine sand?	0.40	0.27
N. Is the texture loamy sand or sand?	0.80	0.53
O. Is the texture coarse sand?	1.20	A site-specific SAR is required

c. If the percolation rate determined under R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in subsection (2)(a), the applicant must use the higher of the two listed percolation rates to obtain the most conservative SAR.

3. For an on-site wastewater treatment facility described in a general permit other than R18-9-E302, the SAR is dependent on the ability of the facility to reduce the level of TSS and BOD_5 and is calculated using the following formula:

$$SAR_a = \left[\left(\frac{11.39}{\sqrt[3]{TSS + BOD_5}} - 1.87\right) SAR^{1.13} + 1\right] SAR$$

a. "SAR_a" is the adjusted soil absorption rate for disposal works design in gallons per day per square foot,

b. "TSS" is the total suspended solids in wastewater delivered to the disposal works in milligrams per liter,

c. "BOD_5" is the five-day biochemical oxygen demand of wastewater delivered to the disposal works in milligrams per liter, and

d. "SAR" is the soil absorption rate for septic tank effluent determined by the subsurface characterization method described in R18-9-A310.

4. An applicant shall ensure that the facility is designed so that the area of the intended installation is large enough to allow for construction of the facility and for future replacement or repair and is at least as large as the following:

a. For a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works. A reserve area is not required for a lot in a subdivision approved before 1974 if the lot conforms to its original approved configuration;

b. For other than a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works.

5. An applicant shall ensure that the subsurface disposal works is designed to achieve the design flow established in R18-9-A309(B)(3) through proper hydraulic function, including conditions of seasonally cold and wet weather.

E. Vertical separation distances.

1. Minimum vertical separation to the seasonal high water table for a disposal works described in R18-9-E302 receiving septic tank effluent. For a disposal works described in R18-9-E302 receiving septic tank effluent at a facility where the septic tank and disposal system described in R18-9-E302 is the sole method of treatment and disposal of wastewater, the minimum vertical separation distance between the lowest point in the disposal works and the seasonal high water table is dependent on the soil absorption rate and is determined as follows:

Soil Absorption Rate (gallons per day per square foot)			**Minimum Vertical Separation Between The Bottom Of The Disposal Works And The Seasonal High Water Table (feet)**	
Trench and Chamber	Bed	Seepage Pit	Trench, Chamber, and Bed	Seepage Pit
1.20+	0.93+	1.20+	Not allowed for septic tank effluent	Not Allowed
0.63+ to 1.20	0.42 to 0.93	0.63+ to 1.20	10	60
0.20 to 0.63	0.13 to 0.42	0.36 to 0.63	5	60
Less than 0.20	Less than 0.13	Less than 0.36	Not allowed for septic tank effluent	Not Allowed

2. Minimum vertical separation to the seasonal high water table for treatment and disposal works technologies described in R18-9-E303 through R18-9-E322. If the minimum vertical separation distance to the seasonal high water table for a disposal works receiving septic tank effluent specified in subsection (E)(1) is not met, the applicant shall comply with the following:

a. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml) delivered to native soil at the bottom of the disposal works. The applicant shall use the following table to select works that achieve a reduced total coliform concentration corresponding to the available vertical separation distance between the bottom of the disposal works and the seasonal high water table:

Available Vertical Separation Distance Between the Bottom of The Disposal Works and the Seasonal High Water Table (feet)		**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Natural Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
For SAR*, 0.20 to 0.63	**For SAR*, 0.63+ to 1.20**	
5	10	8**
4	8	7
3.5	7	6
3	6	5
2.5	5	4
2	4	3
1.5	3	2
1	2	1
0	0	0***

* Soil absorption rate from percolation testing or soil characterization, in gallons per square foot per day.
** Nominal value for a standard septic tank and disposal field (10^8 colony forming units per 100 ml).
*** Nominally free of coliform bacteria.

b. Include a hydraulic analysis with the Notice of Intent to Discharge, based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater downward and laterally without surfacing for the site conditions at the disposal works.

3. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(d) that may cause or contribute to surfacing of wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(d) exists at the location of the disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of acceptable native soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 4 feet thick, and
      ii. The zone of soil is sufficiently permeable to conduct wastewater released from the disposal works vertically downward and laterally without causing surfacing of the wastewater as documented by a hydraulic analysis submitted with the Notice of Intent to Discharge that is based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b);
   b. The subsurface limiting condition is thin enough to allow placement of a disposal works into acceptable native soil beneath the subsurface limiting condition if the following criteria are met:
      i. The bottom of the subsurface limiting condition is not deeper than 10 feet below the land surface, and
      ii. The vertical separation distance from the bottom of the disposal works to the seasonal high water table complies with subsection (E)(1) or (2), as applicable; or
   c. If the disposal works is placed above the subsurface limiting condition and the depth to the subsurface limiting condition is less than 4 feet below the bottom of the disposal works, the design for the on-site wastewater treatment facility shall comply with all of the following:
      i. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml), delivered to acceptable native soil at the bottom of the disposal works, as follows:

Available Vertical Separation Distance from the Bottom of the Disposal Works to the Subsurface Limiting Condition (feet)	**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Acceptable Native Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
3.5	7
3	6
2.5	5
2	4
1.5	0*
1	0*
0.5	0*
0	0*

* Nominally free of coliform bacteria.

      ii. Include a hydraulic analysis with the Notice of Intent to Discharge, based on the location and dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing for the site conditions at the disposal works; and
      iii. If a disinfection device under R18-9-E320 is proposed but is not used with surface disposal of wastewater under R18-9-E321 or "Category A" drip irrigation disposal under R18-9-E322, provide a justification with the Notice of Intent to Discharge stating why the selected type of disposal works is favored over disposal under R18-9-E321 or R18-9-E322.
4. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(e) that promotes accelerated downward movement of insufficiently treated wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(e) exists at the location of the proposed disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of naturally occurring soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 2 feet thick, and
      ii. The SAR of the soil is not less than 0.20 gallons per day per square foot nor more than 1.20 gallons per day per square foot; or
   b. The on-site wastewater treatment facility employs one or more technologies described in R18-9-E303 through R18-9-E322 that produces treated wastewater that meets a total coliform concentration of 1,000,000 ($Log_{10}6$) colony forming units per 100 milliliters, 95th percentile.

F. Materials and manufactured system components.
1. Materials. An applicant shall use aggregate if no specification for disposal works material is provided in this Article.
2. Manufactured components. If manufactured components are used, an applicant shall design, install, and operate the on-site wastewater treatment facility following the manufacturer's specifications. The applicant shall ensure that:
   a. Treatment and containment components, mechanical equipment, instrumentation, and controls have mon-

itoring, inspection, access and cleanout ports or covers, as appropriate, for monitoring and service;

b. Treatment and containment components, pipe, fittings, pumps, and related components and controls are durable, watertight, structurally sound, and capable of withstanding stress from installation and operational service; and

c. Distribution lines for disposal works are constructed of perforated high density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other pipe material, if the pipe is suitable for wastewater disposal use and sufficient openings are available for distribution of the wastewater into the trench or bed area.

3. Electronic components. When electronic components are used, the applicant shall ensure that:

a. The component connections are compliant with the electrical code encompassed in the local building codes applicable in the county in which the facility is installed, except as required for a pressure distribution system under R18-9-E304(D)(2)(e);

b. Instructions and a wiring diagram are mounted on the inside of a control panel cover;

c. The control panel is equipped with a multimode operation switch, red alarm light, buzzer, and reset button;

d. The multimode operation switch operates in the automatic position for normal system operation; and

e. An anomalous condition is indicated by a glowing alarm light and sounding buzzer. The continued glowing of the alarm light after pressing the reset button shall signal the need for maintenance or repair of the system at the earliest practical opportunity.

4. If a conflict exists between this Article and the manufacturer's specifications, the requirements of this Article apply. Except for the requirements in subsection (D) and (E), which always apply, if the conflict voids a manufacturer's warranty, the applicant may submit a request under subsection (G) justifying use of the manufacturer's specifications.

G. Alternative design, setback, installation, or operational features. When an applicant submits a Notice of Intent to Discharge, the applicant may request that the Department review and approve a feature of improved or alternative technology, design, setback, installation, or operation that differs from a general permit requirement in this Article. Designs incorporating alternative features already approved in a current listing on the "proprietary and other reviewed product list" pursuant to R18-9-A309(E) do not need additional approval under this subsection for only those specific alternative features already approved in the proprietary products listing.

1. The applicant shall make the request for an improved or alternative feature of technology, design, setback, installation, or operation on a form provided by the Department and include:

a. A description of the requested change;

b. A citation to the applicable feature or technology, design, setback, installation, or operational requirement for which the change is being requested; and

c. Justification for the requested change, including any necessary supporting documentation.

2. The applicant shall submit the appropriate fee specified under 18 A.A.C. 14 for each requested change. For purposes of calculating the fee, a requested change that is applied multiple times in a similar manner throughout the facility is considered a single request if submitted for concurrent review.

3. The applicant shall provide sufficient information for the Department to determine that the change achieves equal or better performance compared with the general permit requirement, or addresses site or system conditions more satisfactorily than the requirements of this Article.

4. The Department shall review and may approve the request for change.

5. The Department shall deny the request for the change if the change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.

6. The Department shall deny the request for the change if the change:

a. Fails to achieve equal or better performance compared to the general permit requirement;

b. Fails to address site or system conditions more satisfactorily than the general permit requirement;

c. Is insufficiently justified based on the information provided in the submittal;

d. Requires excessive review time, research, or specialized expertise by the Department to act on the request; or

e. For any other justifiable cause.

7. The Department may approve a reduced setback for a facility authorized to discharge under one or more of the general permits in R18-9-E302 through R18-9-E323, either separately or in combination, if the applicant additionally demonstrates at least one of the following:

a. The treatment performance is significantly better than that provided under R18-9-E302(B),

b. The wastewater loading rate is reduced, or

c. Surface or subsurface characteristics ensure that reduced setbacks are protective of human health or water quality.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (E)(1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A313. Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities

A. Facility installation. In addition to installation requirements in the general permit, the applicant shall ensure that the following tasks are performed, as applicable:

1. The facility is installed as described in design documents submitted with the Notice of Intent to Discharge;

2. Components are installed on a firm foundation that supports the components and operating loads;

3. The site is prepared to protect native soil beneath the soil absorption area and in adjacent areas from compaction, prevent smeared absorption surfaces, minimize disturbances from grubbing, and otherwise preclude damage to the disposal area that would impair performance;

4. Components are protected from damage at the construction site and installed in conformance with the manufacturer's instructions if consistent with this Article;

5. Treatment media are placed to achieve uniform density, prevent differential settling, produce a level inlet surface unless otherwise specified by the manufacturer, and avoid introduction of construction contaminants;
6. Backfill is placed to prevent damage to geotextile, liners, tanks, and other components;
7. Soil cover is shaped to shed rainfall away from the backfill areas and prevent ponding of runoff; and
8. Anti-buoyancy measures are implemented during construction if temporary saturated backfill conditions are anticipated during construction.

B. Operation and maintenance. In addition to operation and maintenance requirements in the general permit or specified in the operation and maintenance manual, the permittee shall ensure that the following tasks are performed, as applicable:

1. Pump accumulated residues, inspect and clean wastewater treatment and distribution components, and manage residues to protect human health and the environment;
2. Clean, backwash, or replace effluent filters according to the manufacturer's instructions, and manage residues to protect human health and the environment;
3. Inspect and clean the effluent baffle screen and pump tank, and properly dispose of cleaning residue;
4. Clean the dosing tank effluent screen, pump switches, and floats, and properly dispose of cleaning residue;
5. Flush lateral lines and return flush water to the pretreatment headworks;
6. Inspect, remove and replace, if necessary, and properly dispose of filter media;
7. Rod pressurized wastewater delivery lines and secondary distribution lines (for dosing systems), and return cleaning water to the pretreatment headworks;
8. Inspect and clean pump inlets and controls and return cleaning water to the pretreatment headworks;
9. Implement corrective measures if anomalous ponding, dryness, noise, odor, or differential settling is observed;
10. Inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for:
    a. Influent wastewater quality;
    b. The pressurized dosing system;
    c. The aggregate infiltration bed and mound system;
    d. Wastewater delivery and the engineered pad;
    e. The pressurized delivery system, filter, underdrain, and native soil absorption system;
    f. Saturation condition status in peat and other media; and
    g. Treatment system components;
11. Inspect tanks, liners, ports, seals, piping, and appurtenances for watertightness under all operational conditions;
12. Manage vegetation in areas that contain components subject to physical impairment or damage due to root invasion or animals;
13. Maintain drainage, berms, protective barriers, cover materials, and other features; and
14. Maintain the usefulness of the reserve area to allow for repair or replacement of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A314. Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A person shall not install a septic tank in an on-site wastewater treatment facility unless the tank meets the following requirements:

1. The tank is:
    a. Designed to produce a clarified effluent and provide adequate space for sludge and scum accumulations;
    b. Watertight and constructed of solid durable materials not subject to excessive corrosion or decay;
    c. Manufactured with at least two compartments unless two separate structures are placed in series. The tank is designed so that:
        i. The inlet compartment of any septic tank not placed in series is nominally 67 percent to 75 percent of the total required capacity of the tank,
        ii. Septic tanks placed in series are considered a unit and meet the same criteria as a single tank,
        iii. The liquid depth of the septic tank is at least 42 inches, and
        iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than 3 times the width;
    d. Manufactured with at least two access openings to the tank interior, each at least 20 inches in diameter. The tank is designed so that:
        i. One access opening is located over the inlet end of the tank and one access opening is located over the outlet end;
        ii. Whenever a first compartment exceeds 12 feet in length, another access opening is provided over the baffle wall; and
        iii. Access openings and risers are constructed to ensure accessibility within 6 inches below finished grade;
    e. Manufactured so that the sewage inlet and wastewater outlet openings are not smaller than the connecting sewer pipe. The tank is designed so that:
        i. The vertical leg of round inlet and outlet fittings is at least 4 inches but not smaller than the connecting sewer pipe, and
        ii. A baffle fitting has the equivalent cross-sectional area of the connecting sewer pipe and not less than a 4 inch horizontal dimension if measured at the inlet and outlet pipe inverts;
    f. Manufactured so that the inlet and outlet pipe or baffle extends 4 inches above and at least 12 inches below the water surface when the tank is installed according to the manufacturer's instructions consistent with this Chapter. The invert of the inlet pipe is at least 2 inches above the invert of the outlet pipe;
    g. Manufactured so that the inlet and outlet fittings or baffles and compartment partitions have a free vent area equal to the required cross-sectional area of the connected sewer pipe to provide free ventilation above the water surface from the disposal works or seepage pit through the septic tank, house sewer, and stack to the outer air;
    h. Manufactured so that the open space extends at least 9 inches above the liquid level and the cover of the

septic tank is at least 2 inches above the top of the inlet fitting vent opening;

i. Manufactured so that partitions or baffles between compartments are of solid durable material (wooden baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located at the midpoint of the liquid level of the baffle. If a horizontal slot is used, the slot shall be no more than 6 inches in height;

j. Structurally designed to withstand all anticipated earth or other loads. The tank is designed so that:

i. All septic tank covers are capable of supporting an earth load of 300 pounds per square foot; and

ii. If the top of the tank is greater than 2 feet below finish grade, the septic tank and cover are capable of supporting an additional load of 150 pounds per square foot for each additional foot of cover;

k. Manufactured or installed so that the influent and effluent ends of the tank are clearly and permanently marked on the outside of the tank with the words "INLET" or "IN," and "OUTLET" or "OUT," above or to the right or left of the corresponding openings; and

l. Clearly and permanently marked with the manufacturer's name or registered trademark, or both, the month and year, or Julian date, of manufacture, the maximum recommended depth of earth cover in feet, and the design liquid capacity of the tank. The tank is manufactured to protect the markings from corrosion so that they remain permanent and readable for the operational life of the tank.

2. Materials used to construct or manufacture septic tanks.

a. A septic tank cast-in-place at the site of use shall be protected from corrosion by coating the tank with a bituminous coating, by constructing the tank using a concrete mix that incorporates 15 percent to 18 percent fly ash, or by any other Department-approved means. The tank is designed so that:

i. The coating extends at least 4 inches below the wastewater line and covers all of the internal area above that point; and

ii. A septic tank cast-in-place complies with the "Building Code Requirements for Structural Concrete and Commentary ACI 318-02/318R-02 (2002)," and the "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350/350R-01 (2001)," published by the American Concrete Institute. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from American Concrete Institute, P.O. Box 9094, Farmington Hills, MI 48333-9094.

b. A steel septic tank shall have a minimum wall thickness of No. 12 U.S. gauge steel and be protected from corrosion, internally and externally, by a bituminous coating or other Department-approved means.

c. A prefabricated concrete septic tank shall meet the "Standard Specification for Precast Concrete Septic Tanks, C1227-20," published by the American Society for Testing and Materials. This information is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International West.

d. A septic tank manufactured using fiberglass or thermoplastic shall meet the requirements set forth in "Prefabricated Septic Tanks – IAPMO/ANSI Z1000-2019," published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from International Association of Plumbing and Mechanical Officials, 4755 E. Philadelphia Street, Ontario, CA 917761.

3. Conformance with design, materials, and manufacturing requirements.

a. If any conflict exists between this Article and the information incorporated by reference in subsection (2), the requirements of this Article apply.

b. The Department may approve use of alternative construction materials under R18-9-A312(G). Tanks constructed of wood, block, or bare steel are prohibited.

c. The Department may inspect septic tanks at the site of manufacturing to verify compliance with subsections (1) and (2).

d. The septic tank sale documentation includes:

i. A certificate attesting that the septic tank conforms with the design, materials, and manufacturing requirements in subsections (1) and (2); and

ii. Instructions for handling and installing the septic tank.

4. The septic tank's daily design flow is determined as follows:

a. For a single family dwelling:

i. The design liquid capacity of the septic tank and the septic tank's daily design flow are determined based on the number of bedrooms and fixture count as follows:

Criteria for Septic Tank Size and Design Flow			
Number of Bedrooms	**Fixture Count**	**Minimum Design Liquid Capacity (gallons)**	**Design Flow (gal/day)**

1	7 or less	1000	150
	More than 7	1000	300
2	14 or less	1000	300
	More than 14	1000	450
3	21 or less	1000	450
	More than 21	1250	600
4	28 or less	1250	600
	More than 28	1500	750
5	35 or less	1500	750
	More than 35	2000	900
6	42 or less	2000	900
	More than 42	2500	1050
7	49 or less	2500	1050
	More than 49	3000	1200
8	56 or less	3000	1200
	More than 56	3000	1350

ii. Fixture count is determined as follows:

Residential Fixture Type	Fixture Units	Residential Fixture Type	Fixture Units
Bathtub	2	Sink, bar	1
Bidet	2	Sink, kitchen (including dishwasher)	2
Clothes washer	2	Sink, service	3
Dishwasher (Separate from kitchen)	2	Utility tub or sink	2
Lavatory, single	1	Water closet, 1.6 gallons per flush (gpf)	3
Lavatory, double in master bedroom	1	Water closet, >1.6 to 3.2 gpf	4
Shower, single stall	2	Water closet, greater than 3.2 gpf	6

b. For other than a single family dwelling, the design liquid capacity of a septic tank in gallons is 2.1 times the daily design flow into the tank as determined from Table 1, Unit Design Flows. If the wastewater strength exceeds that of typical sewage, additional tank volume is required.

c. A person may place two septic tanks in series to meet the septic tank design liquid capacity requirements if the capacity of the first tank is at least 67 percent of the total required tank capacity and the capacity of the second tank is at least 33 percent of the total required tank capacity.

5. The following requirements regarding new or replacement septic tank installation apply:
   a. Permanent surface markers for locating the septic tank access openings are provided for maintenance;
   b. A septic tank installed under concrete or pavement has the required access openings extended to grade;
   c. A septic tank effluent filter is installed on the septic tank. The filter shall:
      i. Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and
      ii. Be constructed of materials that are resistant to corrosion and erosion, sized to accommodate hydraulic and organic loading, and removable for cleaning and maintenance; and
   d. The septic tank is tested for watertightness after installation by the water test described in subsections (5)(d)(i) and (5)(d)(ii) and repaired or replaced, if necessary.
      i. The septic tank is filled with clean water, as specified in R18-9-A310(A), to the invert of the outlet and the water left standing in the tank for 24 hours and:
         (1) After 24 hours, the tank is refilled to the invert, if necessary;
         (2) The initial water level and time is recorded; and
         (3) After one hour, water level and time is recorded.
      ii. The tank passes the water test if the water level does not drop over the one-hour period. Any visible leak of flowing water is considered a failure. A damp or wet spot that is not flowing is not considered a failure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A315. Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A. Interceptor requirement. An applicant shall ensure that an interceptor as required by R18-9-A309(A)(7)(c) or necessary due to excessive amounts of grease, garbage, sand, or other

wastes in the sewage is installed between the sewage source and the on-site wastewater treatment facility.

B. Interceptor design. An applicant shall ensure that:

1. An interceptor has not less than two compartments with fittings designed for grease retention and capable of removing excessive amounts of grease, garbage, sand, or other similar wastes. An interceptor may not accept human excreta or toilet wastewater. Applicable structural and materials requirements prescribed in R18-9-A314 apply;
2. Interceptors are located as close to the source as possible and are accessible for servicing. The applicant shall ensure that access openings for servicing are at grade level and gas-tight;
3. The interceptor size for grease and garbage from non-residential kitchens is calculated using by the following equation: Interceptor Size (in gallons) = M × F × T × S.
   a. "M" is the number of meals per peak hour;
   b. "F" is the applicable waste flow rate from Table 1, Unit Design Flows.
   c. "T" is the estimated retention time:
      i. Commercial kitchen waste, dishwasher or disposal: 2.5 hours; or
      ii. Single service kitchen with utensil wash disposal: 1.5 hours;
   d. "S" is the estimated storage factor:
      i. Fully equipped commercial kitchen, 8-hour operation: 1.0;
      ii. Fully equipped commercial kitchen, 16-hour operation: 2.0;
      iii. Fully equipped commercial kitchen, 24-hour operation: 3.0; or
      iv. Single service kitchen, 1.5;
4. The interceptor size for silt and grease from laundries and laundromats is calculated using the following equation: Interceptor Size (in gallons) = M × C × F × T × S.
   a. "M" is the number of machines;
   b. "C" is the machine cycles per hour (assume 2);
   c. "F" is the waste flow rate from Table 1, Unit Design Flows;
   d. "T" is the estimated retention time (assume 2); and
   e. "S" is the estimated storage factor (assume 1.5 that allows for rock filter).

C. The applicant may calculate the size of an interceptor using different factor values than those given in subsections (B)(3) and (4) based on the values justified by the applicant in the Notice of Intent to Discharge submitted to the Department for the on-site wastewater treatment facility.

D. The Department may require installation of a sampling box if the volume or characteristics of the waste will impair the performance of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities

A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304.

B. Within six months before the date of property transfer, the person who is transferring a property served by an on-site wastewater treatment facility shall retain an inspector to perform a transfer of ownership inspection of the on-site wastewater treatment facility who meets the following qualifications:

1. Possesses working knowledge of the type of facility and the inspection process;
2. Holds a certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section by July 1, 2006; and
3. Holds a license in one of the following categories:
   a. An Arizona-registered engineer;
   b. An Arizona-registered sanitarian;
   c. An owner of a vehicle with a human excreta collection and transport license issued under 18 A.A.C. 13, Article 11 or an employee of the owner of the vehicle;
   d. A contractor licensed by the Registrar of Contractors in one of the following categories:
      i. Residential license B-4 or C-41;
      ii. Commercial license A, A-12, or L-41; or
      iii. Dual license KA or K-41;
   e. A wastewater treatment plant operator certified under 18 A.A.C 5, Article 1; or
   f. A person qualifying under another category designated by the Department.

C. The inspector shall complete a Report of Inspection on a form approved by the Department, sign it, and provide it to the person transferring the property. The Report of Inspection shall:

1. Address the physical and operational condition of the on-site wastewater treatment facility and describe observed deficiencies and repairs completed, if any;
2. Indicate that each septic tank or other wastewater treatment container on the property was pumped or otherwise serviced to remove, to the maximum extent possible, solid, floating, and liquid waste accumulations, or that pumping or servicing was not performed for one of the following reasons:
   a. A Discharge Authorization for the on-site wastewater treatment facility was issued and the facility was put into service within 12 months before the transfer of ownership inspection,
   b. Pumping or servicing was not necessary at the time of the inspection based on the manufacturer's written operation and maintenance instructions, or
   c. No accumulation of floating or settled waste was present in the septic tank or wastewater treatment container; and
3. Indicate the date the inspection was performed.

D. Before the property is transferred, the person transferring the property shall provide to the person to whom the property is transferred:

1. The completed Report of Inspection; and
2. Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment facility.

E. The person to whom the property is transferred shall complete a Notice of Transfer on a form approved by the Department and send the form with the applicable fee specified in 18 A.A.C. 14 within 15 calendar days after the property transfer to:

1. The Department for transfer of a property with an on-site wastewater treatment facility for which construction was completed before January 1, 2001; or

2. The health or environmental agency delegated by the Director to administer the on-site wastewater treatment facility program for transfer of a property with an on-site wastewater treatment facility constructed on or after January 1, 2001.

F. If the Department issued a Discharge Authorization for the on-site wastewater treatment facility but the facility was not put into service before the property transfer, an inspection of the facility is not required and the transferee shall complete the Notice of Transfer form as specified in subsection (E).

G. Effective date.
1. The owner of an on-site wastewater treatment facility operating under a Type 4 General Permit shall comply with this Section by November 12, 2005.
2. The owner of any on-site wastewater treatment facility other than a facility identified in subsection (G)(1) shall comply with this Section by July 1, 2006.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2002 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A317. Nitrogen Management Area

A. The Director may designate a new Nitrogen Management Area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes and not covered under an individual permit, modify the boundaries or requirements of a Nitrogen Management Area, or rescind designation of a Nitrogen Management Area.
1. If existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of the Aquifer Water Quality Standard for nitrate at a point or points of current or reasonably foreseeable use of the aquifer, the Director shall use the following criteria to determine whether to designate the area as a Nitrogen Management Area:
   a. Population of the area;
   b. The degree to which the area is unsewered;
   c. Gross areal nitrogen loading, calculated as the amount of nitrogen discharged into the subsurface by use of on-site wastewater treatment facilities, divided by the land area under consideration for designation as a Nitrogen Management Area;
   d. Population growth rate of area;
   e. Existing contamination of groundwater by nitrogen species;
   f. Existing and potential impact to groundwater by sources of nitrogen other than on-site wastewater treatment facilities;
   g. Characteristics of the vadose zone and aquifer;
   h. Location, number, and areal extent of existing and potential sources of nitrogen;
   i. Location and characteristics of existing and potential drinking water supplies; and
   j. Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.
2. The Director may modify the boundaries or requirements of a Nitrogen Management Area or rescind designation of a Nitrogen Management Area based on:
   a. A material change to one or more criterion specified in subsection (A)(1); or
   b. The adoption by a local agency of a master plan to substantially sewer the area as soon as possible, but with a completion deadline within 10 years, unless a completion deadline of more than 10 years is approved by the Director.

B. Preliminary designation, modification, or rescission.
1. The Director shall provide a report to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the Department's proposed action to designate, modify, or rescind a Nitrogen Management Area as follows:
   a. If the Department proposes to designate a Nitrogen Management Area, the Department shall provide a report discussing each criterion specified in subsection (A)(1).
   b. If the Department proposes to modify the boundaries or requirements of a Nitrogen Management Area or rescind the designation of a Nitrogen Management Area, the Department shall provide a report discussing applicable criteria in subsections (A)(1) and (2).
2. The town, city, county, or sanitary district receiving the Director's report may provide written comments to the Department within 120 days to dispute the factual information presented in the report and supply any information supporting the comments.
3. The Director shall evaluate the comments and supporting information obtained under subsection (B)(2) and either designate, modify, or rescind the Nitrogen Management Area or withdraw the proposal.

C. Final designation.
1. If the Director designates or modifies the Nitrogen Management Area, the Department shall:
   a. Issue or modify the Nitrogen Management Area designation and any special provisions established for the area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes but not covered under an individual permit. The Department shall provide notice to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the determination;
   b. Maintain the designation and a map showing the boundaries of the Nitrogen Management Area at the Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, Arizona 85007 and on the Department's web site at www.azdeq.gov; and
   c. Provide, upon request, a copy of the Nitrogen Management Area designation and a map of the area.
2. If the Director withdraws the preliminary Nitrogen Management Area designation or rescinds the Nitrogen Management Area designation, the Director shall issue a determination stating the decision and post it on the Department's web site at www.azdeq.gov.

D. Nitrogen Management Area requirements. Within a Nitrogen Management Area:
1. The Department shall issue a Construction Authorization, under R18-9-A301(D)(1)(c), for an on-site wastewater treatment facility only if the applicant proposes, in the Notice of Intent to Discharge, to employ one or more of the technologies allowed under R18-9-E302 through R18-9-E322 that achieves a discharge level containing not more than 15 mg/l of total nitrogen.

2. An agricultural operation shall use the best control measure necessary to reduce nitrogen discharge when implementing the best management practices developed under 18 A.A.C. 9, Article 4. The Director may require the owner or operator to reassess the performance of the impoundment liner systems constructed under R18-9-403 before November 12, 2005.
3. A person shall comply with any special provision established for the Nitrogen Management Area, as applicable, for the person's facility.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. TYPE 1 GENERAL PERMITS

R18-9-B301. Type 1 General Permit

A. A 1.01 General Permit allows any discharge of wash water from a sand and gravel operation, placer mining operation, or other similar activity, including construction, foundation, and underground dewatering, if only physical processes are employed and only hazardous substances at naturally occurring concentrations in the sand, gravel, or other rock material are present in the discharge.

B. A 1.02 General Permit allows any discharge from hydrostatic tests of a drinking water distribution system and pipelines not previously used, if all the following conditions are met:
1. The quality of the water used for the test does not exceed an Aquifer Water Quality Standard or for non-drinking water pipelines, if reclaimed water is used, the reclaimed water meets Class A+ Reclaimed Water Quality Standards under A.A.C. R18-11-303 or Class B+ Reclaimed Water Quality Standards under A.A.C. R18-11-305;
2. The discharge is not to a water of the United States, unless the discharge is under an AZPDES permit; and
3. The test site is restored to its natural grade.

C. A 1.03 General Permit allows any discharge from hydrostatic tests of a pipeline, tank, or appurtenance previously used for transmission of fluid, other than those previously used for drinking water distribution systems, if all the following conditions are met:
1. All liquid discharge is contained in an impoundment lined with flexible geomembrane. The liquid is evaporated or removed from the impoundment and taken to a treatment works or landfill authorized to accept the material within:
   a. 60 days of the hydrostatic test if the liner is 10 mils, or
   b. 180 days of the hydrostatic test if the liner is 30 mils or greater;
2. The liner is placed over a layer, at least 3 inches thick, of well-sorted sand or finer grained material, or over an underliner that provides protection equal to or better than sand or finer grained material and the calculated seepage is less than 550 gallons per acre per day;
3. The liner is removed and disposed of at an approved landfill unless the liner can be reused at another test location without a reduction in integrity;
4. The test site is restored to its natural grade; and
5. If the test waters are removed using a method not specified in subsection (C)(1), including a discharge under an AZPDES permit, the test waters meet Aquifer Water Quality Standards and the specific method is approved by the Department before the discharge.

D. A 1.04 General Permit allows any discharge from a facility that, for water quality sampling, hydrologic parameter testing, well development, redevelopment, or potable water system maintenance and repair purposes, receives water, drilling fluids, or drill cuttings from a well if the discharge is to the same aquifer in approximately the same location from which the water supply was originally withdrawn, or the discharge is under an AZPDES permit.

E. A 1.05 General Permit allows a discharge to an injection well, surface impoundment, and leach line only if the discharge is filter backwash from a potable water treatment system, condensate from a refrigeration unit, overflows from an evaporative cooler, heat exchange system return water, or swimming pool filter backwash and the discharge is less than 1000 gallons per day. The 1.05 General Permit allows a discharge of those sources to a navigable water if the discharge is authorized by an AZPDES permit.

F. A 1.06 General Permit allows the burial of mining industry off-road motor vehicle waste tires at the mine site in a manner consistent with the cover requirements in R18-13-1203.

G. A 1.07 General Permit allows the operation of dockside facilities and watercraft if the following conditions are met:
1. Docks that service watercraft equipped with toilets provide sanitary facilities at dockside for the disposal of sewage from watercraft toilets. No wastewater from sinks, showers, laundries, baths, or other plumbing fixtures at a dockside facility is discharged into waters of the state;
2. Docks that service watercraft have conveniently located toilet facilities for men and women;
3. No boat, houseboat, or other type of watercraft is equipped with a marine toilet constructed and operated to discharge sewage directly or indirectly into a water of the state, nor is any container of sewage placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of the state by a person;
4. Watercraft with marine toilets constructed to allow sewage to be discharged directly into waters of the state are locked and sealed to prevent usage. Chemical or other type marine toilets with approved storage containers are permitted if dockside disposal facilities are provided; and
5. No bilge water or wastewater from sinks, showers, laundries, baths, or other plumbing fixtures on houseboats or other watercraft is discharged into waters of the state.

H. A 1.08 General Permit allows for any earth pit privy, fixed or transportable chemical toilet, incinerator toilet or privy, or pail or can-type privy if allowed by a county health or environmental department under A.R.S. Title 36 or a delegation agreement under A.R.S. § 49-107.

I. A 1.09 General Permit allows:
1. The operation of:
   a. A sewage treatment facility with flows less than 20,000 gallons per day and approved by the Department before January 1, 2001, and
   b. An on-site wastewater treatment facility with flows less than 20,000 gallons per day operating before January 1, 2001;
2. The person who owns or operates a facility under subsections (I)(1)(a) or (b) to operate the facility if the following conditions are met:
   a. The discharge from the facility does not cause or contribute to a violation of a water quality standard;
   b. The owner or operator does not expand the facility to accommodate flows above the design flow or 20,000 gallons per day, whichever is less;

c. The facility only treats typical sewage;
d. The facility does not treat flows from commercial operations using hazardous substances or creating hazardous wastes, as defined in A.R.S. § 49-921(5);
e. The discharge from the facility does not create any environmental nuisance condition listed in A.R.S. § 49-141; or
f. The owner or operator does not alter the treatment or disposal characteristics of the original facility, except as allowed under R18-9-A309(A)(9)(a).

J. A 1.10 General Permit allows the operation of a sewage collection system installed before January 1, 2001 that serves downstream from the point where the daily design flow is 3000 gallons per day or that includes a manhole, force main, or lift station serving more than one dwelling regardless of flow, if:
1. The system complies with the performance standards in R18-9-E301(B),
2. No sewage is released from the sewage collection system to the land surface, and
3. The system is not operating under the 2.05 General Permit.

K. A 1.11 General Permit allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3000 gallons per day to the building drains, or a single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral, or manhole, regardless of daily design flow, if all of the following are met:
1. The system does not cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4;
2. No sewage is released from the sewage collection system to the land surface;
3. No environmental nuisance condition listed in A.R.S. § 49-141 is created;
4. The system does not include a manhole, force main, or lift station serving more than one dwelling;
5. Applicable local administrative requirements for review and approval of design and construction are followed;
6. The performance standards specified in R18-9-E301(B) are met using:
   a. Local building and construction codes,
   b. Relevant design and construction standards specified in R18-9-E301, and
   c. Appropriate operation and maintenance;
7. The system flows directly into one of the following downstream facilities:
   a. An on-site wastewater treatment facility;
   b. A sewage treatment facility operating under an individual permit; or
   c. A sewage collection system operating under a 1.10, 2.05, or 4.01 General Permit; and
8. The system is not operating under a 2.05 General Permit.

L. A 1.12 General Permit allows the discharge of wastewater resulting from washing concrete from trucks, pumps, and ancillary equipment to an impoundment if the following conditions are met:
1. The person holds an AZPDES Construction General Permit authorizing the concrete washout activities;
2. The Stormwater Pollution Prevention Plan required by the Construction General Permit issued according to 18 A.A.C. 9, Article 9, Part C, for the construction activity addresses the concrete washout activities;
3. The vegetation at the soil base of the impoundment is cleared, grubbed, and compacted to uniform density not less than 95 percent. If the impoundment is located above grade, the berms or dikes are compacted to a uniform density not less than 95 percent;
4. If groundwater is less than 20 feet below land surface, the impoundment is lined with a synthetic liner at least 30 mils thick;
5. The impoundment is located at least 50 feet from any storm drain inlet, open drainage facility, or watercourse and 100 feet from any water supply well;
6. The impoundment is designed and operated to maintain adequate freeboard to prevent overflow or discharge of wastewater;
7. The concrete washout wastewater from any wash pad is routed to the impoundment;
8. The impoundment receives only concrete washout wastewater;
9. The annual average daily flow of wastewater to the impoundment is less than 3000 gallons per day; and
10. The following closure requirements are met.
    a. The facility is closed by removing and appropriately disposing of any liquids remaining in the impoundment,
    b. The area is graded to prevent ponding of water, and
    c. Closure activities are completed before filing of the Notice of Termination under the AZPDES Construction General Permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

A. A 2.01 General Permit allows for a drywell that drains an area where hazardous substances are used, stored, loaded, or treated.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation has concluded that:
   a. Analytical results from sampling the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediments that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5-foot increments starting from 5 feet

below ground surface and extending to 10 feet below the base of the drywell injection pipe; or

d. If coarse grained lithology prevents the collection of representative soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance;

3. Design information to demonstrate that the requirements in subsection (C) are satisfied; and
4. A copy of the Best Management Practices Plan described in subsection (D)(5).

C. Design requirements. An applicant shall:

1. Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;
2. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
3. Locate the bottom of the drywell hole at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to at least 10 feet above the elevation of saturated conditions before constructing the drywell in the borehole;
4. Ensure that the drywell design or drainage area design includes a method to remove, intercept, or collect pollutants that may be present at the operation with the potential to reach the drywell. The applicant may include a flow control or pretreatment device, such as an interceptor, sump, or another device or structure designed to remove, intercept, or collect pollutants. The applicant may use flow control or pretreatment devices listed under R18-9-C304(D)(1) or (2) to satisfy the design requirements of this subsection;
5. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey; and
6. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns, the location of floor drains and French drains plumbed to the drywell, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas.

D. Operational and maintenance requirements.

1. A permittee shall operate the drywell only for the disposal of stormwater. The permittee shall not release industrial process waters or wastes in the drywell or drywell retention basin drainage area.
2. The permittee shall implement a Best Management Practices Plan for operation of the drywell and control of pollutants in the drywell drainage area.
3. The permittee shall keep the Best Management Practices Plan on-site or at the closest practical place of work and provide the plan to the Department upon request.
4. The permittee may substitute any Spill Prevention Containment and Control Plan, facility response plan, or an AZPDES Stormwater Pollution Prevention Plan that meets the requirements of this subsection for a Best Management Practices Plan. If the permittee submits a substitute for the Best Management Practices Plan, the permittee shall identify the conditions within the substitute plan that satisfy the requirements of subsection (D).
5. The Best Management Practices Plan shall include:
   a. A site plan showing surface drainage patterns and the location of floor drains, water supply, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas. The site plan shall show surface grading details designed to prevent drainage and spills of hazardous substances from leaving the drainage area and entering the drywell;
   b. A design plan showing details of drywell design and drainage design, including flow control or pretreatment devices, such as interceptors, sumps, and other devices and structures designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell;
   c. Procedures to prevent and contain spills and minimize discharges to the drywell;
   d. Operational practices that include routine inspection and maintenance of the drywell and associated pretreatment and flow-control devices, periodic inspection of waste storage facilities, and proper handling of hazardous substances to prevent discharges to the drywell. Routine inspection and maintenance shall include:
      i. Replacing the adsorbent material in the skimmers, if installed, when the adsorbent capacity is reached;
      ii. Maintaining valves and associated piping for a drywell injection and treatment system;
      iii. Maintaining magnetic caps and mats, if installed;
      iv. Removing sludge from the oil/water separator, if installed, and replacing the filtration or adsorption material to maintain treatment capacity;
      v. Removing sediment from the catch basin inlet filters and retention basin to maintain required storage capacity; and
   e. Procedures for periodic employee training on practices required by the Best Management Practices Plan specific to the drywell and prevention of unauthorized discharges.
6. The permittee shall implement waste management practices to prohibit and prevent discharges, other than those exempted in A.R.S. § 49-250(B)(23), in the drywell drainage area, including:
   a. Maintaining an up-to-date inventory of generated wastes and waste products;
   b. Disposing or recycling all wastes or solvents through a company licensed to handle the material;
   c. Where possible, collecting and storing waste in waste receptacles located outside the drywell drainage area. If the permittee collects and stores the waste within the drywell drainage area, the permittee shall collect and store the waste in properly designed receptacles; and
   d. Using a licensed waste hauler to transport waste offsite to a permitted waste disposal facility.

E. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and the flow-control and treatment systems, and remove sediment annually or when 25 percent of the effective capacity is filled, whichever comes first, to restore capacity and ensure that the drywell functions properly. The permittee shall character-

ize the sediments that are removed from the drywell after inspection and dispose of the sediments according to local, state, and federal requirements; and

2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that the treatment system is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

F. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, the location of water supply wells, monitor wells, underground storage tanks, and places where hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including any flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and methods proposed to prevent and contain hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, maintenance, and waste management practices;
5. Drywell sediment waste characteristics and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

G. Spills.

1. In the event of a spill, the permittee shall:
   a. Notify the Department within 24 hours of any spill of hazardous or toxic substance that enters the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of a hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the drywell injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample the soil in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. Based on the results of subsection (G)(1)(d), the Director may require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

H. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under A.R.S. § 49-201(19) at a mining site.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge under R18-9-A301(B), an applicant shall submit the construction and operation specifications used to satisfy the requirements in subsection (C)(1).

C. Design and operational requirements.

1. An applicant shall design, construct, and operate the stockpile so that it does not impound water. An applicant may rely on stormwater run-on controls or facility design features, such as drains, or both.

2. An applicant shall direct storm runoff contacting the stockpile to a mine pit or a facility covered by an individual or general permit.
3. A permittee shall maintain any engineered feature of the facility in good working condition.
4. A permittee shall visually inspect the facility at least quarterly and repair any defect as soon as practical.
5. A permittee shall not add hazardous substances to the stockpiled material.

D. Closure requirements. In addition to the closure requirements in R18-9-A306, the following apply:
1. If an intermediate stockpile covered under a 2.02 General Permit is permanently closed, a permittee shall remove any remaining material, to the greatest extent practical, and regrade the area to prevent impoundment of water.
2. The permittee shall submit a narrative description of closure measures to the Department within 30 days after closure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C303. 2.03 General Permit: Hydrologic Tracer Studies

A. A 2.03 General Permit allows for a discharge caused by the performance of tracer studies.
1. The 2.03 General Permit does not authorize the use of any hazardous substance, radioactive material, or any substance identified in A.R.S. § 49-243(I) in a tracer study.
2. A permittee shall complete a single tracer test within two years of the Notice of Intent to Discharge.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A narrative description of the tracer test including the type and amount of tracer used;
2. A Material Safety Data Sheet for the tracer; and
3. Unless the injection or distribution is within the capture zone of an established passive containment system meeting the requirements of A.R.S. § 49-243(G), the following information:
   a. A narrative description of the impacts that may occur if a solution migrates outside the test area, including a list of downgradient users, if any;
   b. The anticipated effects and expected concentrations, if possible to calculate; and
   c. A description of the monitoring, including types of tests and frequency.

C. Design and operational requirements. A permittee shall:
1. Ensure that injection into a well inside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed the total depth of the influence of the hydrologic sink;
2. Ensure that injection into a well outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed rock fracture pressures during injection of the tracer;
3. Not add a substance to a well that is not compatible with the well's construction;
4. Ensure that a tracer is compatible with the construction materials at the impoundment if a tracer is placed or collected in an existing impoundment;
5. For at least two years, monitor quarterly a well that is hydraulically downgradient of the test site for the tracer if a tracer is used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) and less than 85 percent of the tracer is recovered. The permittee may adjust this period with the consent of the Department if the permittee shows that the hydraulic gradient causes the tracer to reach the monitoring point in a shorter or longer period of time;
6. Ensure that a tracer does not leave the site in concentrations distinguishable from background water quality; and
7. Monitor the amount of tracer used and recovered and submit a report summarizing the test and results to the Department within 30 calendar days of test completion.

D. Recordkeeping. A permittee shall retain the following information at the site where the facility is located for at least three years after test completion and make it available to the Department upon request.
1. Test protocols,
2. Material Safety Data Sheet information,
3. Recovery records, and
4. A copy of the report submitted to the Department under subsection (C)(7).

E. Closure requirements.
1. If a tracer was used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G), a permittee shall account for any tracer not recovered through attenuation, modeling, or monitoring.
2. The permittee shall achieve closure immediately following the test, or if the test area is within a pollutant management area defined in an individual permit, at the conclusion of operations.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

A. A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.
1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under the 2.04 General Permit.
2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only motor fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, including service bays, are not covered under the 2.04 General Permit.
3. Definition. For purposes of this Section, "hazardous substances" means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies such as those

used for cleaning windshields, but not degreasers, engine cleaners, or similar products.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:

1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
   a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
   d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. Design requirements.

1. An applicant shall:
   a. Include a flow control or pretreatment device identified in subsections (D)(1) or (2), or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
   b. Calculate the volume of runoff generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell;
   c. Follow local codes and regulations to meet retention periods for removing standing water;
   d. Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank;
   e. Locate the bottom of the drywell injection pipe at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to a level at least 10 feet above the elevation at which saturated conditions were encountered in the borehole before constructing the drywell in the borehole;
   f. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey and record the location on the site plans;
   g. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
   h. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains and French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas; and
   i. Prepare design plans showing details of drywell design and drainage design, including one or a combination of pre-approved technologies described in subsections (D)(1) and (2) designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell.
2. For an existing drywell, an applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the depth of the drywell borehole and injection pipe, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.

D. Flow control and pretreatment. A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:

1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.
   a. Normally closed manual or automatic valve. The permittee shall leave a normally closed valve in a closed position except when stormwater is allowed to enter the drywell;
   b. Raised drywell inlet. The permittee shall:
      i. Raise the drywell inlet at least six inches above the bottom of the retention basin or other storage structure, or install a six-inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and
      ii. Ensure that the storage capacity is at least 110 percent of the volume of the design storm event required by the local jurisdiction and the estimated volume of a potential motor fuel spill based on the facility's past incident reports or incident reports for other facilities that are similar in design;
   c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or a storm event when the mat or cap is temporarily removed to allow stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;
   d. Primary sump, interceptor, or settling chamber. The permittee may use a primary sump, interceptor, or settling chamber only in combination with another flow control or pre-treatment technology.
      i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor,

or chamber before allowing stormwater to enter the drywell.

ii. The permittee shall install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell; install the drywell injection pipe in a separate chamber and connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.

iii. The permittee may install fuel hydrocarbon detection sensors in the sump, interceptor, or settling chamber that use flow control to prevent fuel from discharging into the drywell;

2. Pretreatment. The permittee shall prevent the bypass of motor fuels and hazardous substances from the pretreatment system to the drywell during periods of high flow.

a. Catch basin inlet filter. The permittee shall:

i. Install a catch basin inlet filter to fit inside a catchment drain to prevent motor fuels and hazardous substances from entering the drywell,

ii. Ensure that a motor fuel spill or a spill during a high rainfall does not bypass the system and directly release to the drywell injection pipe, and

iii. Combine the catch basin inlet filter with a flow control technology to prevent contaminated stormwater from entering the drywell injection pipe;

b. Combined settling chamber and an oil/water separator.

i. The permittee shall install a system that incorporates a catch basin inlet, a settling chamber, and an oil/water separator.

ii. The permittee may incorporate a self-sealing mechanism, such as fuel hydrocarbon detection sensors that activate a valve to cut off flow to the drywell inlet.

c. Combined settling chamber and oil/water separator, and filter/adsorption. The permittee shall:

i. Allow for adequate collection and treatment capacity for solid and liquid separation; and

ii. Allow a minimum treated outflow from the system to the drywell inlet of 20 gallons per minute. If a higher outflow rate is anticipated, the applicant shall design a larger collection system with storage capacity.

d. Passive skimmer.

i. If a passive skimmer is used, the permittee shall install sufficient hydrocarbon adsorbent materials, such as pads and socks, or suspend the materials on top of the static water level in a sump or other catchment to absorb the entire volume of expected or potential spill.

ii. The permittee may use a passive skimmer only in combination with another flow control or pre-treatment technology.

E. Operation and maintenance. A permittee shall:

1. Operate the drywell only for the subsurface disposal of stormwater;
2. Remove or treat any motor fuel or hazardous substance spills;
3. Replace the adsorbent material in skimmers, if installed; when the adsorbent capacity is reached;
4. Maintain valves and associated piping;
5. Maintain magnetic caps and mats, if installed;
6. Remove sludge from the oil/water separator and replace the filtration or adsorption materials to maintain treatment capacity;
7. Remove sediment from the catch basin inlet filters and retention basins to maintain required storage capacity;
8. Remove accumulated sediment from the settling chamber annually or when 25 percent of the effective settling capacity is filled, whichever occurs first; and
9. Provide new employee training within one month of hire and annual employee training on how to maintain and operate flow control and pretreatment technology used in the drywell.

F. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and in the flow control and treatment systems to ensure that the drywell is functioning properly; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that it is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

G. Recordkeeping. A permittee shall maintain, for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and specific methods proposed for motor fuel and hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, and maintenance;
5. Drywell sediment waste characterization and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

H. Spills.

1. In the event of a spill, a permittee shall:
   a. Notify the Department within 24 hours of any spill of motor fuel or hazardous or toxic substances that enters into the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of

motor fuel or hazardous substance in the drywell drainage area and basin drainage area;

c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and

d. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:

i. Submit the results to the Department within 60 days of the date of the spill; and

ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.

2. The Director may, based on the results of subsection (H)(1)(d), require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

I. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4096, effective September 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C305. 2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System

A. Definition. For purposes of this Section, "imminent and substantial threat to public health or the environment" means when:

1. The volume of a release is more than 2000 gallons; or
2. The volume of a release is more than 50 gallons but less than 2000 gallons and any one of the following apply:
   a. The release entered onto a recognized public area and members of the public were present during the release or before the release was mitigated;
   b. The release occurred on a public or private street and pedestrians were at risk of being splashed by vehicles during the release or before the release was mitigated;
   c. The release entered a perennial stream, an intermittent stream during a time of flow, a waterbody other than an ephemeral stream, a normally dry detention or sedimentation basin, or a drywell;
   d. The release occurred within an occupied building due to a condition in the permitted sewage collection system; or
   e. The release occurred within 100 feet of a school or a public or private drinking water supply well.

B. A 2.05 General Permit allows a permittee to manage, operate, and maintain a sewage collection system under the terms of a CMOM Plan that complies with subsection (D). The Department considers a sewage collection system operating in compliance with an AZPDES permit that incorporates provisions for capacity, management, operation, and maintenance of the system to comply with the provisions of the 2.05 General Permit regardless of whether a Notice of Intent to Discharge for the system was submitted to the Department.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. The name and ownership of any downstream sewage collection system and sewage treatment facility that receives sewage from the applicant's sewage collection system;
2. A map of the service area for which general permit coverage is sought, showing streets and sewage service boundaries for the sewage collection system;
3. A statement indicating that the CMOM Plan is in effect and the principal officer or ranking elected official of the sewage collection system has approved the plan; and
4. A statement indicating whether a local ordinance requires an on-site wastewater treatment facility to hookup to the sewage collection system.

D. CMOM Plan.

1. A permittee shall continuously implement a CMOM Plan for the sewage collection system under the permittee's ownership, management, or operational control. The CMOM Plan shall include information to comply with subsection (E)(1) and instructions on:
   a. How to properly manage, operate, and maintain all parts of the sewage collection system that are owned or managed by the permittee or under the permittee's operational control, to meet the performance requirements in R18-9-E301(B);
   b. How to maintain sufficient capacity to convey the base flows and peak wet weather flow of a 10-year, 24-hour storm event for all parts of the collection system owned or managed by the permittee or under the permittee's operational control;

c. All reasonable and prudent steps to minimize infiltration to the sewage collection system;
d. All reasonable and prudent steps to stop all releases from the collection system owned or managed by the permittee or under the permittee's operational control; and
e. The procedure for reporting releases described in subsection (F).

2. The permittee shall maintain and update the CMOM Plan for the duration of this general permit and make it available for Department and public review.
3. If the Department requests the CMOM Plan and upon review finds that the CMOM Plan is deficient, the Department shall:
a. Notify the permittee in writing of the specific deficiency and the reason for the deficiency, and
b. Establish a deadline of at least 60 days to allow the permittee to correct the deficiency and submit the amended provision to the Department for approval.

E. Sewage release response determination. If the sewage collection system releases sewage, the Director shall consider any of the following factors in determining compliance:
1. Sufficiency of the CMOM Plan.
a. The level of detail provided by the CMOM Plan is appropriate for the size, complexity, and age of the system;
b. The level of detail provided by the CMOM Plan is appropriate considering geographic, climatic, and hydrological factors that may influence the sewage collection system;
c. The CMOM Plan provides schedules for the periodic preventative maintenance of the sewage collection system, including cleaning of all reaches of the sewage collection system below a specified pipe diameter.
i. The CMOM Plan may allow inspection of sewer lines by Closed Circuit Television (CCTV) and postponement of cleaning to the next scheduled cleaning cycle if the CCTV inspection indicated that cleaning of a reach of the sewer is not needed.
ii. The CMOM Plan may specify inspection and cleaning schedules that differ according to pipe diameter or other characteristics of the sewer;
d. The CMOM Plan identifies components of the sewage collection system that have insufficient capacity to convey, when properly maintained, the peak wet weather flow of a 10-year, 24-hour storm event. For those identified components, a capital improvement plan exists for achieving sufficient wet weather flow capacity within ten years of the effective date of permit coverage;
e. The CMOM Plan includes an overflow emergency response plan appropriate to the size, complexity, and age of the sewage collection system considering geographic, climatic, and hydrological factors that may influence the system;
f. The CMOM Plan establishes a procedure to investigate and enforce against any commercial or industrial entity whose flows to the sewage collection system have caused or contributed to a release;
g. The CMOM Plan adequately addresses management of flows from upstream sewage collection systems not under the ownership, management, or operational control of the permittee; or
h. Any other factor necessary to determine if the CMOM Plan is sufficient;

2. Compliance with the CMOM Plan.
a. The permittee's response to releases as established in the overflow emergency response plan, including whether:
i. Maintenance staff responds to and arrive at the release within the time period specified in the plan;
ii. Maintenance staff follow all written procedures to remove the cause of the release;
iii. Maintenance staff contain, recover, clean up, disinfect, and otherwise mitigate the release of sewage; and
iv. Required notifications to the Department, public health agencies, drinking water suppliers, and the public are provided;
b. The permittee's activities and timeliness in:
i. Implementing specified periodic preventative maintenance measures;
ii. Implementing the capital improvement plan; and
iii. Investigating and enforcing against an upstream sewage collection system, not under the ownership and operational control of the permittee, if those systems are impediments to the proper management of flows in the permittee's sewage collection system; or
c. Any other factor necessary to determine CMOM Plan compliance;

3. Compliance with the reporting requirements in subsection (F) and the public notice requirements in subsection (G); or
4. The release substantially endangers public health or the environment.

F. Reporting requirements.
1. Sewage releases.
a. A permittee shall report to the Department, by telephone, facsimile, or on the applicable notification form on the Department's Internet web site, any release that is an imminent and substantial threat to public health or the environment as soon as practical, but no later than 24 hours of becoming aware of the release.
b. A permittee shall submit a report to the Department within five business days after becoming aware of a release that is an imminent and substantial threat to public health or the environment. The report shall include:
i. The location of the release;
ii. The sewage collection system component from which the release occurred;
iii. The date and time the release began, was stopped, and when mitigation efforts were completed;
iv. The estimated number of persons exposed to the release, the estimated volume of sewage released, the reason the release is considered an imminent and substantial threat to public health or the environment if the volume is 2000 gallons or less, and where the release flowed;

v. The efforts made by the permittee to stop, contain, and clean up the released material;
vi. The amount and type of disinfectant applied to mitigate any associated public health or environmental risk; and
vii. The cause of the release or effort made to determine the cause and any effort made to help prevent a future reoccurrence.

2. Annual report. The permittee shall:
   a. Submit an annual report to the Department postmarked no later than March 1. The report shall:
      i. Tabulate all releases of more than 50 gallons from the permitted sewage collection system;
      ii. Provide the date of any release that is an imminent and substantial threat to public health or the environment; and
      iii. For other reportable releases under subsection (F)(2)(a)(i), provide the information in subsection (F)(1)(b);
   b. Provide an amended map of the service area boundaries if, during the calendar year, any area was removed from the service area or if any area was added to the service area that the permittee wishes to include under the 2.05 General Permit and associated CMOM Plan.

G. Public notice. The permittee shall:
1. Post a notice, in a format approved by the Department, at any location where there were more than three reportable releases under subsection (F)(2)(a) from the sewage collection system during any 12-month period,
2. Include within the notice a warning that identified the releases or potential releases at the location and potential health hazards from any release,
3. Post the notice at a place where the public is likely to come in contact with the release, and
4. Maintain the postings until no releases from the location are reported for at least 12 months from the last release and the permittee followed all actions specified in the CMOM Plan to prevent releases at that location during the period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C306. 2.06 General Permit: Fish Hatchery Discharge to a Perennial Surface Water

A. A 2.06 General Permit allows a fish hatchery to discharge to a perennial surface water if Aquifer Water Quality Standards are met at the point of discharge and the fish hatchery is operating under a valid AZPDES permit.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall provide:
1. The applicable AZPDES permit number;
2. A description of the facility; and
3. A laboratory report characterizing the wastewater discharge, including the analytical results for all numeric Aquifer Water Quality Standards under R18-11-406.

C. Design and operational requirements. An applicant shall:
1. Collect a representative sample of the discharge to demonstrate compliance with all numeric Aquifer Water Quality Standards and make the results available to the Department upon request, and
2. Maintain a record of the average and daily flow rates and make it available to the Department upon request.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART D. TYPE 3 GENERAL PERMITS

R18-9-D301. 3.01 General Permit: Lined Impoundments

A. A 3.01 General Permit allows a lined surface impoundment and a lined secondary containment structure. A permittee shall:
1. Ensure that inflow to the lined surface impoundment or lined secondary containment structure does not contain organic pollutants identified in A.R.S. § 49-243(I);
2. Ensure that inflow to the lined surface impoundment or lined secondary containment structure is from one or more of the following sources:
   a. Evaporative cooler overflow, condensate from a refrigeration unit, or swimming pool filter backwash;
   b. Wastewater that does not contain sewage, temporarily stored for short periods of time due to process upsets or rainfall events, provided the wastewater is promptly removed from the facility as required under subsection (D)(5). Facilities that continually contain wastewater as a normal function of facility operations are not covered under this general permit;
   c. Stormwater runoff that is not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act;
   d. Emergency fire event water;
   e. Wastewater from air pollution control devices at asphalt plants if the wastewater is routed through a sedimentation trap or sump and an oil/water separator before discharge;
   f. Non-contact cooling tower blowdown and non-contact cooling water, except discharges from electric generating stations with more than 100 megawatts generating capacity;
   g. Boiler blowdown;
   h. Wastewater derived from a potable water treatment system, including clarification sludge, filtration backwash, lime and lime-softening sludge, ion exchange backwash, and reverse osmosis spent waste;
   i. Wastewater from food washing;
   j. Heat exchanger return water;
   k. Wastewater from industrial laundries;
   l. Hydrostatic test water from a pipeline, tank, or appurtenance previously used for transmission of fluid;
   m. Wastewater treated through an oil/water separator before discharge; and
   n. Cooling water or wastewater from food processing.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A listing and description of all sources of inflow;
2. A representative chemical analysis of each expected source of inflow. If a sample is not available before facility construction, a permittee shall provide the chemical

analysis of each inflow to the Department within 60 days of each inflow to the facility;

3. A narrative description of how the conditions of this general permit are satisfied. The narrative shall include a Quality Assurance/Quality Control program for liner installation, impoundment maintenance and repair, and impoundment operational procedures; and
4. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design and installation requirements. An applicant shall:

1. Design and construct surface water controls to:
   a. Ensure that the impoundment or secondary containment structure maintains, using design volume or mechanical systems, normal operating volumes, if any, and any inflow from the 100-year, 24-hour storm event. The facility shall maintain at least 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering the size of the impoundment and meteorologic and other site-specific factors; and
   b. Direct any surface water run-on from the 100-year 24-hour storm event around the facility if not intended for capture by facility;
2. Ensure that the facility design accommodates any significant geologic hazard, addressing static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
3. Ensure that site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound; and
4. Comply with the following impoundment lining requirements:
   a. If a synthetic liner is used, ensure that the liner is at least a 30-mil geomembrane liner or a 60-mil liner if High Density Polyethylene, or an alternative, that the liner's calculated seepage rate is less than 550 gallons per acre per day, and:
      i. Anchor the liner by securing it in an engineered anchor trench;
      ii. Ensure that the liner is ultraviolet resistant if it is regularly exposed to sunlight; and
      iii. Ensure that the liner is constructed of a material that is chemically compatible with the wastewater or impounded solution and is not affected by corrosion or degradation;
   b. If a soil liner is used:
      i. Ensure that it resists swelling, shrinkage, and cracking and that the liner's calculated seepage rate is less than 550 gallons per acre per day;
      ii. Ensure that the soil is at least 1-foot thick and compacted to a uniform density of 95 percent to meet the "Standard Test Method for Laboratory Compaction Characteristics of Soil Using Standard Effect (12,400 ft-lbf/ft^3), D698-00ae1," (2000) published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
      iii. Upon installation, protect the soil liner to prevent desiccation; and
   c. For new facilities, develop and implement a construction Quality Assurance/Quality Control program that addresses site and subgrade preparation, inspection procedures, field testing, laboratory testing, and final inspection after construction of the liner to ensure functional integrity.

D. Operational requirements. A permittee shall:

1. Maintain sufficient freeboard to manage the 100-year, 24-hour storm event including at least 2 feet of freeboard under normal operating conditions. Management of the 100-year, 24-hour storm event may be through design, pumping, or a combination of both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for damage to the liner and for accumulation of residual material at least monthly. The operator shall conduct an inspection within 72 hours after the facility receives a significant volume of stormwater inflow;
4. Repair damage to the liner by following the Quality Assurance/Quality Control Plan required under subsection (B)(3); and
5. Remove all inflow from the impoundment as soon as practical, but no later than 60 days after a temporary event, for facilities designed to contain inflow only for temporary events, such as process upsets.

E. Recordkeeping. A permittee shall maintain at the site, the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The construction Quality Assurance/Quality Control program documentation; and
6. Records of any inflow into the impoundment other than those permitted by this Section.

F. Reporting requirements.

1. If the liner leaks, as evidenced by a drop in water level not attributable to evaporation, or if the berm breaches or an impoundment is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4).

G. Closure requirements. The permittee shall notify the Department of the intent to close the facility permanently. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
1. Remove liquids and any solid residue on the liner and dispose appropriately;
2. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
3. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall define the lateral and vertical extent of contamination and, within 60 days of the exceedance, notify the Department and submit an action plan for achieving clean closure for the Department's approval before implementing the plan;
4. If there is no evidence of holes, tears, or defective seams that could have leaked:
   a. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   b. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
   c. Grade the facility to prevent the impoundment of water; and
5. Notify the Department within 60 days following closure that the action plan was implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:
1. Liquid fraction. The discharge meets:
   a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
   b. The discharge meets one of the following criteria for microbiological contaminants:
      i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of *E. coli* bacteria is not more than 1/100 ml, or
      ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of *E. coli* bacteria is less than 126/100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and
2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in A.R.S. § 49-201(19).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A characterization of the discharge, including a representative chemical and biological analysis of expected discharges and all source waters; and
2. The design capacity of any impoundment covered by this general permit.

C. Impoundment design and siting requirements. An applicant shall:
1. Ensure that the depth to the static groundwater table is greater than 20 feet;
2. Not locate the area of discharge immediately above karstic or fractured bedrock, unless the discharge meets the microbial limits specified in subsection (A)(1)(b)(i);
3. Maintain a minimum horizontal setback of 100 feet between the facility and any water supply well;
4. Design and construct an impoundment to maintain, using design volume or mechanical systems, normal operating volumes and any inflow from the 100-year, 24-hour storm event. The applicant shall:
   a. Divert any surface water run-on from the 100-year, 24-hour storm event around the facility if not intended for capture by facility design; and
   b. Design the facility to maintain 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering meteorological factors, the size of the impoundment, and other site-specific factors; or
   c. Discharge to surface water under the conditions of an AZPDES permit; and
5. Manage off-site disposal of sludge according to A.R.S. Title 49, Chapter 4.

D. Operational requirements.
1. Inorganic chemical, organic chemical, and pesticide monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A).
   b. If the concentration of any pollutant exceeds the numeric Aquifer Water Quality Standard, the permittee shall submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency for that pollutant to quarterly.
   c. If, in the quarterly sampling, the condition in subsection (D)(1)(b) continues for two consecutive quarters, the permittee shall submit an application for an individual permit.
2. Microbiological contaminant monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A)(1)(b).
   b. If the concentration of any pollutant exceeds the limits established in subsection (A)(1)(b), the permittee shall submit a report to the Department with a proposal for mitigation and increase monitoring frequency for that pollutant to monthly.
   c. If, in the monthly sampling, the condition in subsection (D)(2)(b) continues for three consecutive months, the permittee shall submit an application for an individual permit.

E. Recordkeeping. A permittee shall maintain at the site, the following information, if applicable for the disposal method, for at least 10 years, and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;

2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Water quality data collected under subsection (D);
4. Standard operating procedures; and
5. Records of any discharge other than those identified under subsection (B).

F. Reporting requirements. The permittee shall:
1. Report unauthorized flows into the impoundment to the Department within five days of discovery, and
2. Submit the report required in subsections (D)(1)(b) or (2)(b) within 30 days of receiving the analytical results.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes

A. A 3.03 General Permit allows a facility to discharge water from washing vehicle exteriors and vehicle equipment. The 3.03 General Permit does not authorize:
1. Discharge water that typically results from the washing of vehicle engines unless the discharge is to a lined surface impoundment;
2. Direct discharges of sanitary sewage, vehicle lubricating oils, antifreeze, gasoline, paints, varnishes, solvents, pesticides, or fertilizers;
3. Discharges resulting from washing the interior of vessels used to transport fuel products or chemicals, or washing equipment contaminated with fuel products or chemicals; or
4. Discharges resulting from washing the interior of vehicles used to transport mining concentrates that originate from the same mine site, unless the discharge is to a lined surface impoundment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a narrative description of the facility and a design of the disposal system and wash operations.

C. Design, installation, and testing requirements. An applicant shall:
1. Design and construct the wash pad:
   a. To drain and route wash water to a sump or similar sediment-settling structure and an oil/water separator or a comparable pretreatment technology;
   b. Of concrete or material chemically compatible with the wash water and its constituents; and
   c. To support the maximum weight of the vehicle or equipment being washed with an appropriate safety factor;
2. Not use unlined ditches or natural channels to convey wash water;
3. Ensure that a surface impoundment meets the requirements in R18-9-D301(C)(1) through (3). The applicant shall ensure that berms or dikes at the impoundment can withstand wave action erosion and are compacted to a uniform density not less than 95 percent;
4. Ensure that a surface impoundment required for wash water described in subsection (A)(1) meets the design and installation requirements in R18-9-D301(C);
5. If wash water is received by an unlined surface impoundment or engineered subsurface disposal system, the applicant shall:
   a. Ensure that the annual daily average flow is less than 3000 gallons per day;
   b. Maintain a minimum horizontal setback of 100 feet between the impoundment or subsurface disposal system and any water supply well;
   c. Ensure that the bottom of the surface impoundment or subsurface disposal system is at least 50 feet above the static groundwater level and the intervening material does not consist of karstic or fractured bedrock;
   d. Ensure that the wash water receives primary treatment before discharge through, at a minimum, a sump or similar structure for settling sediments or solids and an oil/water separator or a comparable pretreatment technology designed to reduce oil and grease in the wastewater to 15 mg/l or less;
   e. Withdraw the separated oil from the oil/water separator using equipment such as adjustable skimmers, automatic pump-out systems, or level sensing systems to signal manual pump-out; and
   f. If a subsurface disposal system is used, design the system to prevent surfacing of the wash water.

D. Operational requirements. The permittee shall:
1. Inspect the oil/water separator before operation to ensure that there are no leaks and that the oil/water separator is in operable condition;
2. Inspect the entire facility at least quarterly. The inspection shall, at a minimum, consist of a visual examination of the wash pad, the sump or similar structure, the oil/water separator, and all surface impoundments;
3. Visually inspect each surface impoundment at least monthly, to ensure the volume of wash water is maintained within the design capacity and freeboard limitation;
4. Repair damage to the integrity of the wash pad or impoundment liner as soon as practical;
5. Maintain the oil/water separator to achieve the operational performance of the separator;
6. Remove accumulated sediments in all surface impoundments to maintain design capacity; and
7. Use best management practices to minimize the introduction of chemicals not typically associated with the wash operations. Only biodegradable surfactant or soaps are allowed. The permittee shall not use products that contain chemicals in concentrations likely to cause a violation of an Aquifer Water Quality Standard at the applicable point of compliance.

E. Monitoring requirements.
1. If wash water is discharged to an unlined surface impoundment or other area for subsurface disposal, the permittee shall monitor the wash water quarterly at the point of discharge for pH and for the presence of C_{10} through C_{32} hydrocarbons using a Department of Health Services certified method.
2. If pH is not between 6.0 and 9.0 or the concentration of C_{10} through C_{32} hydrocarbons exceeds 50 mg/l, the permittee shall, within 30 days of the monitorings, submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency to monthly.

3. If the condition in subsection (E)(2) persists for three consecutive months, the permittee shall submit, within 90 days, an application for an individual permit.

F. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure; and
3. The Material Safety Data Sheets for the chemicals used in the wash operations and any required monitoring results.

G. Closure requirements. A permittee shall comply with the closure requirements specified in R18-9-D301(G) if a liner has been used. If no liner is used the permittee shall remove and appropriately dispose of any liquids and grade the facility to prevent impoundment of water.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites

A. A 3.04 General Permit allows discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites.
1. The following discharges are allowed under the 3.04 General Permit:
   a. Seepage from tailing impoundments, unleached rock piles, or process areas;
   b. Process solution temporarily stored for short periods of time due to process upsets or rainfall, provided the solution is promptly removed from the facility as required under subsection (D);
   c. Stormwater runoff not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act; and
   d. Wash water specific to sand and gravel operations not covered by R18-9-B301(A).
2. Facilities that continually contain process solution as a normal function of facility operations are not eligible for coverage under the 3.04 General Permit. If a normal process solution contains a pollutant regulated under A.R.S. § 49-243(I) the 3.04 General Permit does not apply if the pollutant will compromise the integrity of the liner.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A description of the sources of inflow to the facility. An applicant shall include a representative chemical analysis of expected sources of inflow to the facility unless a sample is not available, before facility construction, in which case the applicant shall provide a chemical analysis of solution present in the facility to the Department within 90 days after the solution first enters the facility;
2. Documentation demonstrating that the facility design and operation under subsections (C) and (D) have been reviewed by a mining engineer or an Arizona-registered professional engineer before submission to the Department; and
3. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design, construction, and installation requirements. An applicant shall:
1. Design and construct the impoundment or secondary containment structure as specified under R18-9-D301(C)(1);
2. Ensure that conveyance systems are capable of handling the peak flow from the 100-year storm;
3. Construct the liner as specified in R18-9-D301(C)(4)(a);
4. Develop and implement a Quality Assurance/Quality Control program that meets or exceeds the liner manufacturer's guidelines. The program shall address site and subgrade preparation, inspection procedures, field testing, laboratory testing, repair of seams during installation, and final inspection of the completed liner for functional integrity;
5. If the facility is located in the 100-year flood plain, design the facility so it is protected from damage or flooding as a result of a 100-year, 24-hour storm event;
6. Design and manage the facility so groundwater does not come into contact with the liner;
7. Ensure that the facility design addresses any significant geologic hazard relating to static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
8. Ensure that the site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound;
9. Ensure that the liner is anchored by being secured in an engineered anchor trench. If regularly exposed to sunlight, the applicant shall ensure that the liner is ultraviolet resistant; and
10. Use compacted clay subgrade in areas with shallow groundwater conditions.

D. Operational requirements. The permittee shall:
1. Maintain the freeboard required in subsection (C)(1) through design, pumping, or both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for cracks, tears, perforations and residual build-up at least monthly. The operator shall conduct and document an inspection after the facility receives significant volumes of stormwater inflow;
4. Report cracks, tears, and perforations in the liner to the Department, and repair them as soon as practical, but no later than 60 days under normal operating conditions, after discovery of the crack, tear, or perforation;
5. For facilities that temporarily contain a process solution due to process upsets, remove the process solution from the facility as soon as practical, but no later than 60 days after cessation of the upset; and
6. For facilities that temporarily contain a process solution due to rainfall, remove the process solution from the facility as soon as practical.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The Quality Assurance/Quality Control program required under subsection (C)(4); and
6. Records of any unauthorized flows into the impoundment.

F. Reporting requirements.
1. If the liner is breached, as evidenced by a drop in water level not attributable to evaporation, or if the impoundment breaches or is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3).

G. Closure requirements.
1. The permittee shall notify the Department of the intent to close the facility permanently.
2. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
   c. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall, within 60 days notify the Department and submit an action plan for the Department's approval before implementing the plan;
   d. If there is no evidence of holes, tears, or defective seams that could have leaked:
      i. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
      ii. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
      iii. Grade the facility to prevent the impoundment of water; and
3. Notify the Department within 60 days following closure that the action plan has been implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D305. 3.05 General Permit: Disposal Wetlands

A. A 3.05 General Permit allows discharges of reclaimed water into constructed or natural wetlands, including waters of the United States, waters of the state, and riparian areas, for disposal. This general permit does not apply if the purpose of the wetlands is to provide treatment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the name and individual permit number of the facility providing the reclaimed water.

C. Design requirements. An applicant shall:
1. Ensure that the reclaimed water released into the wetland meets numeric and narrative Aquifer Water Quality Standards for all parameters except for coliform bacteria and is Class A+ reclaimed water. A+ reclaimed water is wastewater that has undergone secondary treatment established under R18-9-B204(B)(1), filtration, and meets a total nitrogen concentration under R18-9-B204(B)(3) and fecal coliform limits under R18-9-B204(B)(4);
2. Maintain a minimum horizontal separation of 100 feet between any water supply well and the maximum wetted area of the wetland;
3. Post signs at points of access and every 250 feet along the perimeter of the wetland stating, "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER. DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol; and
4. Ensure that wetland siting is consistent with local zoning and land use requirements.

D. Operational requirements.
1. A permittee shall manage the wetland to minimize vector problems.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. Management of flows into and through the wetland to minimize erosion and damage to vegetation;
   c. Management of visitation and use of the wetlands by the public;
   d. A management plan for vector control;
   e. A plan or criteria for enhancing or supplementing of wetland vegetation; and
   f. Management of shallow groundwater conditions on existing on-site wastewater treatment facilities.
3. The permittee shall perform quarterly inspections to review bank integrity, erosion evidence, the condition of signage and vegetation, and correct any problem noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the wetland, including the volume of inflow to the wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by

final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites

A. A 3.06 General Permit allows the operation of constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a design, including information on the quality of the influent, the treatment process to be used, the expected quality of the wastewater, and the nutrients and other constituents that will indicate wetland performance.

C. Design, construction, and installation. An applicant shall:
1. Ensure that:
   a. Water released into the treatment wetland is compatible with construction materials and vegetation;
   b. Water released from the treatment wetland:
      i. Meets numeric Aquifer Water Quality Standards,
      ii. Has a pH between 6.0 and 9.0, and
      iii. Has a sulfate concentration less than 1000 mg/l; and
   c. Water released from the treatment wetland complies with and is released under an individual permit and an AZPDES Permit, if required;
2. Construct the treatment wetland with a liner, using a low-hydraulic conductivity synthetic liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that, if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
3. Design the treatment wetland for optimum:
   a. Sizing appropriate for the anticipated treatment,
   b. Cell configuration,
   c. Vegetative species composition, and
   d. Berm configuration;
4. Construct and locate the treatment wetland so that it:
   a. Maintains physical integrity during a 100-year, 24-hour storm event; and
   b. Operates properly during a 25-year, 24-hour storm event;
5. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table; and
6. If public access to the treatment wetland is anticipated or encouraged, post signs at points of access and every 250 feet along the perimeter of the treatment wetland stating, "CAUTION. THESE WETLANDS CONTAIN MINE DRAINAGE WATER. DO NOT DRINK." The permittee shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol.

D. Operational requirements.
1. The permittee shall monitor the water leaving the treatment wetlands at least quarterly for the standards specified in subsection (C)(1)(b). Monitoring shall include nutrients or other constituents used as indicators of treatment wetland performance.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the treatment wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address problems, including treatment performance, wash-out and vegetation die-off, and a plan to apply for an individual permit if the treatment wetland is unable to achieve the treatment standards in subsection (C)(1)(b) on a continued basis;
   c. Management of flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.
3. The permittee shall perform quarterly inspections to review the bank and liner integrity, erosion evidence, and the condition of signage and vegetation, and correct any problems noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements.
1. If preliminary laboratory results indicate that the quality of the water leaving the treatment wetlands does not meet the standards specified in subsection (C)(1)(b), the permittee may request that the laboratory re-analyze the sample before reporting the results to the Department. The permittee shall:
   a. Conduct verification sampling within 15 days of receiving final laboratory results,
   b. Conduct verification sampling only for parameters that are present in concentrations greater than the standards specified in subsection (C)(1)(b), and
   c. Notify the Department in writing within five days of receiving final laboratory results.
2. If the final laboratory result confirms that the quality of the water leaving the treatment wetlands does not meet the standards in subsection (C)(1)(b), the permittee shall implement the contingency plan required by subsection (D)(2)(b) and notify the Department that the plan is being implemented.
3. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland, including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by

final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

A. A 3.07 General Permit allows constructed wetlands that receive with the intent to treat, discharges of reclaimed water that meet the secondary treatment level requirements specified in R18-9-B204(B)(1).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and individual permit number of any facility that provides the reclaimed water to the treatment wetland;
2. The name and individual permit number of any facility that receives water released from the treatment wetland;
3. The design of the treatment wetland construction and management project, including information on the quality of the influent, the treatment process, and the expected quality of the wastewater;
4. A Best Management Practices Plan that includes:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address any problem, including treatment performance, wash-out, and vegetation die-off;
   c. A management plan for flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.

C. Design requirements. An applicant shall:
1. Release water from the treatment wetland under an individual permit and an AZPDES permit, if required. The applicant shall release water from the treatment wetland only to a direct reuse site if the site is permitted to receive reclaimed water of the quality generated under the individual permit specified in subsection (B)(1);
2. Construct and locate the treatment wetland so that it:
   a. Maintains physical integrity during a 100-year, 24-hour storm event; and
   b. Operates properly during a 25-year, 24-hour storm event;
3. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table;
4. Maintain a minimum horizontal separation of 100 feet between a water supply well and the maximum wetted area of the treatment wetland;
5. Maintain the setbacks specified in R18-9-B201(I) for no noise, odor, or aesthetic controls between the property boundary at the site and the maximum wetted area of the treatment wetland;
6. Fence the treatment wetland area to prevent unauthorized access;
7. Post signs at points of access stating "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER, DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol;
8. Construct the treatment wetland with a liner using low hydraulic conductivity liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
9. Calculate the size and depth of the treatment wetland so that the rate of flow allows adequate treatment detention time. The applicant shall design the treatment wetland with at least two parallel treatment cells to allow for efficient system operation and maintenance;
10. Ensure that the treatment wetland vegetation includes cattails, bulrush, common reed, or other species of plants with high pollutant treatment potential to achieve the intended water quality identified in subsection (B)(3); and
11. Ensure that construction and operation of the treatment wetlands is consistent with local zoning and land use requirements.

D. Operational requirements. The permittee shall:
1. Implement the Best Management Practices Plan approved under subsection (B);
2. Monitor wastewater leaving the treatment wetland to ensure that discharge water quality meets the expected wastewater quality specified in subsection (B)(3). The permittee shall ensure that analyses of wastewater samples are conducted by a laboratory certified by the Department of Health Services, following the Department's Quality Assurance/Quality Control requirements;
3. Follow the prescribed measures as required in the contingency plan under subsection (B)(4)(b) and submit a written report to the Department within five days if verification sampling demonstrates that an alert level or discharge limit is exceeded;
4. Inspect the treatment wetlands at least quarterly for bank and liner integrity, erosion evidence, and condition of signage and vegetation, and correct any problem discovered; and
5. Ensure that the treatment wetland is operated by a certified operator under 18 A.A.C. 5, Article 1.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART E. TYPE 4 GENERAL PERMITS

R18-9-E301. 4.01 General Permit: Sewage Collection Systems

A. A 4.01 General Permit allows for construction and operation of a new sewage collection system or expansion of an existing sewage collection system involving new construction as follows:
1. A sewage collection system or portion of a sewage collection system that serves downstream from the point where the daily design flow is 3000 gallons per day based on Table 1, Unit Design Flows, except a gravity sewer line conveying sewage from a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow;
2. A sewage collection system that includes a manhole; or
3. A sewage collection system that includes a force main or lift station serving more than one dwelling.

B. Performance. An applicant shall design, construct, and operate a sewage collection system so that the sewage collection system:
1. Provides adequate wastewater flow capacity for the planned service area;
2. Minimizes sedimentation, blockage, and erosion through maintenance of proper flow velocities throughout the system;
3. Prevents releases of sewage to the land surface through appropriate sizing, capacities, and inflow and infiltration prevention measures throughout the system;
4. Protects water quality through minimization of exfiltration losses from the system;
5. Provides for adequate inspection, maintenance, testing, visibility, and accessibility;
6. Maintains system structural integrity; and
7. Minimizes septic conditions in the sewage collection system.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information:
1. A statement on a form approved by the Director, signed by the owner or operator of the sewage treatment facility that treats or processes the sewage from the proposed sewage collection system.
   a. The statement shall affirm that the additional volume of wastewater delivered to the facility by the proposed sewage collection system will not cause any flow or effluent quality limits of the individual permit for the facility to be exceeded.
   b. If the facility is classified as a groundwater protection permit facility under A.R.S. § 49-241.01(C), or if no flow or effluent limits are applicable, the statement shall affirm that the design flow of the facility will not be exceeded;
2. If the proposed sewage collection system delivers wastewater to a downstream sewage collection system under different ownership or control, a statement on a form approved by the Director, signed by the owner or operator of the downstream sewage collection system, affirming that the downstream system can maintain the performance required by subsection (B) when receiving the increased flows;
3. A general site plan showing the boundaries and key aspects of the project;
4. Construction quality drawings that provide overall details of the site and the engineered works comprising the project including:
   a. The plans and profiles for all sewer lines, manholes, force mains, depressed sewers, and lift stations with sufficient detail to allow Department verification of design and performance characteristics;
   b. Relevant cross sections showing construction details and elevations of key components of the sewage collection system to allow Department verification of design and performance characteristics, including the slope of each gravity sewer segment stated as a percentage; and
   c. Drainage features and controls, and erosion protection as applicable, for the components of the project; and
   d. Horizontal and vertical location of utilities within the area affected by the sewer line construction;
5. Documentation of design flows for significant components of the sewage collection system and the basis for calculating the design flows;
6. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department. The applicant may submit the drawings in a Department-approved electronic format; and
7. Design documents, including plans, specifications, drawings, reports, and calculations that are signed, dated, and sealed by an Arizona-registered professional engineer. The designer shall use good engineering judgment by following engineering standards of practice, and rely on appropriate engineering methods, calculations, and guidance.

D. Design requirements.
1. General Provisions. An applicant shall design and construct a new sewage collection system or an expansion of an existing sewage collection system involving new construction, according to the requirements of this general permit. An applicant shall:
   a. Base design flows for components of the system on unit flows specified in Table 1, Unit Design Flows.
   b. Design gravity sewer lines and all other sewage collection system components, including, manholes, force mains, lift stations, depressed sewers, and appurtenant devices and structures to accommodate maximum sewage flows as follows:
      i. Any point in a sewer main when flowing full can accommodate a peak wet weather flow calculated by multiplying the sum of the upstream sources of flow from Table 1, Unit Design Flows by a dry weather peaking factor based on upstream population, as tabulated below, and adding a wet weather infiltration and inflow rate based on either a percentage of peak dry weather flow or a gallons per acre rate of flow;

Upstream Population	Dry Weather Peaking Factor
100	3.62
200	3.14
300	2.90
400	2.74
500	2.64
600	2.56

700	2.50
800	2.46
900	2.42
1000	2.38
1001 to 10,000	$PF = (6.330 \times p^{-0.231}) + 1.094$
10,001 to 100,000	$PF = (6.177 \times p^{-0.233}) + 1.128$
More than 100,000	$PF = (4.500 \times p^{-0.174}) + 0.945$
PF = Dry Weather Peaking Factor p = Upstream Population	

ii. For a lift station serving less than 600 single family dwelling units (d.u.), use either of the following methods to size the pumps for peak dry weather flow in gallons per minute and add an allowance for wet weather flow and infiltration:

(1) Peak dry weather flow = 17 $d.u.^{0.42}$, or

(2) Peak dry weather flow = 11.2 $(population)^{0.42}$

iii. If justified by the applicant, the Department may accept lower unit flow values in the served area due to significant use of low-flow fixtures, hydrographs of actual flows, or other factors;

c. Use the "Uniform Standard Specifications for Public Works Construction" (revisions through 2004) and the "Uniform Standard Details for Public Works Construction" (revisions through 2004) published by the Maricopa Association of Governments, and the "Standard Specifications for Public Improvements," (2003 Edition), and "Standard Details for Public Improvements," (2003 Edition), published jointly by Pima County Wastewater Management and the City of Tucson, as the applicable design and construction criteria, unless the Department approves alternative design standards or specifications. An applicant in a county other than Maricopa and Pima shall use design and construction criteria from either the Maricopa Association of Governments or the Pima County Wastewater Management and the City of Tucson for the facility unless alternative criteria are designated by the Department.

i. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material.

ii. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the Maricopa Association of Governments, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona 85003, or on the web at http://www.mag.maricopa.gov/archive/Newpages/on-line.htm; or from Pima County Wastewater Management, 201 N. Stone Avenue, Tucson, Arizona 85701-1207, or on the web at http://www.pima.gov/wwm/stddet;

d. Ensure that sewage collection system components are separated from drinking water distribution system components as specified in 18 A.A.C. 5, Article 5;

e. Ensure that sewage collection system components are separated from reclaimed water system components as specified in 18 A.A.C. 9, Article 6; and

f. Request review and approval of an alternative to a design feature specified in this Section by following the requirements in R18-9-A312(G).

2. Gravity sewer lines. An applicant shall:

a. Ensure that any sewer line that runs between manholes, if not straight, is of constant horizontal curvature with a radius of curvature not less than 200 feet;

b. Cover each sewer line with at least 3 feet of earth cover meeting the requirements of subsection (D)(2)(h). The applicant shall:

i. Include at least one note specifying this requirement in construction plans;

ii. If site-specific limitations prevent 3 feet of earth cover, provide the maximum cover attainable, construct the sewer line of ductile iron pipe or other design of equivalent or greater tensile and compressive strength, and note the change on the construction plans; and

iii. Ensure that the design of the pipe and joints can withstand crushing or shearing from any expected static and live load to protect the structural integrity of the pipe. Construction plans shall note locations requiring these measures;

c. If sewer lines cross or are constructed in floodways;

i. Place the lines at least 2 feet below the level of the 100-year storm scour depth and calculated 100-year bed degradation and construct the lines using ductile iron pipe or pipe with equivalent tensile strength, compressive strength, shear resistance, and scour protection.

ii. If it is not possible to maintain the 2 feet of clearance specified in subsection (D)(2)(c)(i), using the process described in R18-9-A312(G), provide a design that ensures that the sewer line will withstand any lateral and vertical load for the scour and bed degradation conditions specified in subsection (D)(2)(c)(i);

iii. Ensure that sewer lines constructed in a floodway extend at least 10 feet beyond the boundary of the 100-year storm scouring;

iv. If a sewer line is constructed in a floodway and is longer than the applicable maximum manhole spacing distance in subsection (D)(3)(a), using the process described in R18-9-A312(G), provide a design that ensures the performance standards in subsection (B) are met; and

v. Note locations requiring these measures on the construction plans;

d. Ensure that each sewer line is 8 inches in diameter or larger except the first 400 feet of a dead end sewer line with no potential for extension may be 6 inches in diameter if the design flow criteria specified in subsections (D)(1)(a) and (D)(1)(b) are met and the sewer line is installed with a slope sufficient to achieve a velocity of at least 3 feet per second when flowing full. If the line is extended, the applicant seeking the extension shall replace the entire length with larger pipe to accommodate the new design flow unless the applicant demonstrates with engineering calculations that using the existing 6-inch pipe will accommodate the design flow;

e. Design sewer lines with at least the minimum slope calculated from Manning's Formula using a coeffi-

cient of roughness of 0.013 and a sewage velocity of 2 feet per second when flowing full.

i. An applicant may request a smaller minimum slope under R18-9-A312(G) if the smaller slope is justified by a quarterly program of inspections, flushings, and cleanings.

ii. If a smaller minimum slope is requested, the applicant shall not specify a slope that is less than 50 percent of that calculated from Manning's formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second.

iii. The ratio of flow depth in the pipe to the diameter of the pipe shall not exceed 0.75 in peak dry weather flow conditions;

f. Design sewer lines to avoid a slope that creates a sewage velocity greater than 10 feet per second. The applicant shall construct any sewer line carrying a flow with a normal velocity of greater than 10 feet per second using ductile iron pipe or pipe with equivalent erosion resistance, and structurally reinforce the receiving manhole or sewer main;

g. Design and install sewer lines, connections, and fittings with materials that meet or exceed manufacturer's specifications consistent with this Chapter to:

i. Limit inflows, infiltration, and exfiltration;

ii. Resist corrosion in the ambient electrochemical environment;

iii. Withstand anticipated static and live loads; and

iv. Provide internal erosion protection;

h. Indicate trenching and bedding details applicable for each pipe material and size in the design plans. Unless the Department approved alternative design standards or specifications under subsection (D)(1)(c), the applicant shall place and bed the sewer lines in trenches following the specifications in "Trench Excavation, Backfilling, and Compaction" (Section 601) revised 2004, published by the Maricopa Association of Governments; and "Rigid Pipe Bedding for Sanitary Sewers" (WWM 104) revised July 2002, and "Flexible Pipe Bedding for Sanitary Sewers" (WWM 105) revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

i. Perform a deflection test of the total length of all sewer lines made of flexible materials to ensure that the installation meets or exceeds the manufacturer's recommendations and record the results;

j. Test each segment of the sewer line for leakage using the applicable method below and record the results:

i. "Standard Test Method for Installation of Acceptance of Plastic Gravity Sewer Lines Using Low-Pressure Air, F1417-92(1998)," published by the American Society for Testing and Materials;

ii. "Standard Practice for Testing Concrete Pipe Sewer Lines by Low-Pressure Air Test Method, C924-02 (2002)," published by the American Society for Testing and Materials;

iii. "Standard Test Method for Low-Pressure Air Test of Vitrified Clay Pipe Lines, C828-03 (2003)," published by the American Society for Testing and Materials;

iv. "Standard Test Method for Hydrostatic Infiltration Testing of Vitrified Clay Pipe Lines, C1091-03a (2003)," published by the American Society for Testing Materials;

v. "Standard Practice for Infiltration ion and Exfiltration Acceptance Testing of Installed Precast Concrete Pipe Sewer Lines, C969-02 (2002)," published by the American Society for Testing Material; or

vi. "Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications, D2321-00 (2000)," published by the American Society for Testing Materials; or

vii. The material listed in subsections (D)(2)(j)(i) through (vi) is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;

k. Test the total length of the sewer line for uniform slope by lamp lighting, remote camera or similar method approved by the Department, and record the results; and

l. Minimize the planting within the disturbed area of new sewage collection system construction of plant species having roots that are likely to reach and damage the sewer or impair the operation of the sewer or visual and vehicular access to any manhole.

3. Manholes.

a. An applicant shall install manholes at all grade changes, size changes, alignment changes, sewer intersections, and at any location necessary to comply with the following spacing requirements:

Sewer Pipe Diameter (inches)	Maximum Manhole Spacing (feet)
Less than 8	400
8 to less than 18	500
18 to less than 36	600
36 to less than 60	800
60 or greater	1300

b. The Department shall allow greater manhole spacing if the applicant follows the procedure provided in R18-9-A312(G) and provides documentation showing the operator possesses or has available specialized sewer cleaning equipment suitable for the increased spacing.

c. The applicant shall ensure that manhole design is consistent with "Pre-cast Concrete Sewer Manhole" #420-1, revised January 1, 2004 and #420-2, revised January 1, 2001, "Offset Manhole for 8" – 30" Pipe" #421 (1998), and "Sewer Manhole and Cover Frame Adjustment" #422, revised January 1, 2001, published by the Maricopa Association of Governments; and "Manholes and Appurtenant Items" (WWM 201 through WWM 211, except WWM 204, 205, and

206), revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

d. The applicant shall not locate manholes in areas subject to more than incidental runoff from rain falling in the immediate vicinity unless the manhole cover assembly is designed to restrict or eliminate stormwater inflow.

e. The applicant shall test each manhole using one of the following test protocols:

i. Watertightness testing by filling the manhole with water. The applicant shall ensure that the drop in water level following presoaking does not exceed 0.0034 of total manhole volume per hour;

ii. Negative air pressure testing using the "Standard Test Method for Concrete Sewer Manholes by Negative Air Pressure (Vacuum) Test, C1244-02e1 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007, or obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or

iii. Holiday testing of a lined manhole constructed with uncoated rebar using the "High-Voltage Electrical Inspection of Pipeline Coatings, RP0274-2004 (2004)," published by the National Association of Corrosion Engineers (NACE International). This material is incorporated by reference as modified below, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or obtained from NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906. The following substitutions apply:

(1) Where the word "metal" is used in the standard, use the word "surface" instead; and

(2) Where the words "pipe" or "pipeline" are used, use the word "manhole" instead.

f. The applicant shall perform manhole testing under subsection (D)(3)(e) after installation of the manhole cone or top riser to verify watertightness integrity of the manhole from the top of the cone or riser down.

i. Upon satisfactory test results, the applicant shall install the manhole ring and any spacers, complete the joints, and seal the manhole to a watertight condition.

ii. If the applicant can install the manhole cone or top riser, spacers, and ring to final grade without disturbance or adjustment by later construction, the applicant may perform the testing from the top of the manhole ring on down.

g. The applicant shall locate a manhole to provide adequate visibility and vehicular maintenance accessibility following construction.

4. Force mains. An applicant may install a force main if it meets the following design, installation, and testing requirements. The applicant shall:

a. Design force mains to maintain a minimum flow velocity of 3 feet per second and a maximum flow velocity of 7 feet per second. The applicant may design for sustained periods of flow above 7 feet per second, if the applicant justifies the design using the process specified in R18-9-A312(G);

b. Ensure that force mains have the appropriate valves and controls required to prevent drainback to the lift station. If drainback is necessary during cold weather to prevent freezing, the control system may allow manual or automatic drainback;

c. Incorporate air release valves or other appropriate components in force mains at all high points along the line to eliminate air accumulation. If engineering calculations provided by the applicant demonstrate that air will not accumulate in a given high point under typical flow conditions, the Department shall waive the requirement for an air release valve;

d. Design restrained joints or thrust blocks on force mains to accommodate water hammer, surge control, and to prevent excessive movement of the force main. Submitted construction plans shall show restrained joint or thrust block locations and details;

e. If a force main is proposed to discharge directly to a sewage treatment facility without entering a flow equalization basin, include in the Notice of Intent to Discharge a statement from the owner or operator of the sewage treatment facility that the design is acceptable;

f. Design a force main to withstand a pressure of 50 pounds per square inch or more above the design working pressure for two hours and test upon completion to ensure no leakage;

g. Supply flow to a force main using a lift station that meets the requirements of subsection (D)(5); and

h. Ensure that force mains are designed to control odor.

5. Lift stations. An applicant shall:

a. Secure a lift station to prevent tampering and affix on its exterior, or on the nearest vertical object if the lift station is entirely below grade, at least one warning sign that includes the 24-hour emergency phone number of the owner or operator of the collection system;

b. Protect lift stations from physical damage from a 100-year flood event. An applicant shall not construct a lift station in a floodway;

c. Lift station wet well design.

i. Ensure that the minimum wet well volume in gallons is 1/4 of the product of the minimum pump cycle time, in minutes, and the total pump capacity, in gallons per minute;

ii. Protect the wet well against corrosion to provide at least a 20-year operational life;

iii. Ensure that wet well volume does not allow the sewage retention time to exceed 30 minutes unless the sewage is aerated, chemicals are added to prevent or eliminate hydrogen sulfide formation, or adequate ventilation is provided.

Notwithstanding these measures, the applicant shall not allow the septic condition of the sewage to adversely affect downstream collection systems or sewage treatment facility performance;

iv. Ensure that excessively high or low levels of sewage in the wet well trigger an audible or visible alarm at the wet well site and at the system control center;

v. Ensure that a wet well designed to accommodate more than 5000 gallons per day has a horizontal cross-sectional area of at least 20 square feet; and

vi. Ensure that lift stations are designed to prevent odor from emanating beyond the lift station site;

d. Equip a lift station wet well with at least two pumps. The applicant shall ensure that:

i. The pumps are capable of passing a 2.5-inch sphere or are grinder pumps;

ii. The lift station is capable of operating at design flow with any one pump out of service; and

iii. Piping, valves, and controls are arranged to allow independent operation of each pump;

e. Not use suction pumps if the sewage lift is more than 15 feet. The applicant shall ensure that other types of pumps are self-priming and that pump water brake horsepower is at least 0.00025 times the product of the required discharge, in gallons per minute, and the required total dynamic head, in feet; and

f. For lift stations receiving an average flow of more than 10,000 gallons per day, include a standby power source and redundant wastewater level controls in the lift station design that will provide immediate service and remain available for 24 hours per day if the main power source or controls fail.

6. Depressed sewers. An applicant shall:

a. Size the depressed sewer to attain a minimum velocity of 3 feet per second through all barrels of the depressed sewer when the flow equals or exceeds the design daily peak dry weather flow,

b. Design the depressed sewer to convey the sewage flow through at least two parallel pipes at least 6 inches in diameter,

c. Include an inlet and outlet structure at each end of the inverted sewer,

d. Design the depressed sewer so that the barrels are brought progressively into service as flow increases to its design value, and

e. Design the depressed sewer to minimize release of odors to the atmosphere.

E. Additional Discharge Authorization requirements. An applicant shall:

1. Supply a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department that provides the following:

a. Confirmation that the project was completed in compliance with the requirements of this Chapter, as described in the plans and specifications corresponding to the Construction Authorization issued by the Director, or with changes that are reflected in as-built plans submitted with the Engineer's Certificate of Completion;

b. As-built plans, if required, that are properly identified and numbered; and

c. Satisfactory field test results from deflection, leakage, and uniform slope testing;

2. Provide any other relevant information required by the Department to determine that the facility conforms to the terms of the 4.01 General Permit; and

3. Provide a signed certification on a form approved by the Department that:

a. Confirms that an operation and maintenance manual exists for the sewage collection system;

b. Confirms that the operation and maintenance manual addresses components of operation and maintenance specified on the certification form;

c. Provides the 24-hour emergency number of the owner or operator of the sewage collection system; and

d. Provides an address where the operation and maintenance manual is maintained and confirms that the manual is available for inspection at that address by the Department on request.

F. Operation and maintenance requirements. The permittee shall:

1. Operate the new sewage collection system or expansion of an existing sewage collection system involving new construction using the operation and maintenance manual certified by the owner or operator in subsection (E)(3), to meet the performance standards specified in subsection (B), unless the permittee is operating the sewage collection system under a CMOM Plan under the general permit established in R18-9-C305;

2. Ensure that the sewage collection system is operated according to the operator certification requirements in 18 A.A.C. 5, Article 1; and

3. For safety during operation and maintenance of lift station and other confined space components of the sewage collection system, follow all applicable state and federal confined space entry requirements.

G. Recordkeeping. A person owning or operating a facility permitted under this Section shall maintain the documents listed in subsection (E) for the life of the facility and make them available to the Department upon request.

H. Repairs.

1. A Notice of Intent to Discharge is not required for sewage collection system repairs. Repairs include work performed in response to deterioration or damage of existing structures, devices, and appurtenances with the intent to maintain or restore the system to its original design flow and operational characteristics. Repairs do not include changes in vertical or horizontal alignment.

2. Components used in the repair shall meet the design, installation, and operational requirements of this Section.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E302. 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow

A. A 4.02 General Permit allows for the construction and operation of a system with less than 3000 gallons per day design flow consisting of a septic tank dispensing wastewater to an approved means of disposal described in this Section. Only

gravity flow of wastewater from the septic tank to the disposal works is authorized by this general permit.

1. The standard septic tank and disposal works design specified in the 4.02 General Permit serves sites where no site limitations are identified by the site investigation conducted under R18-9-A310.
2. If site conditions allow, this general permit authorizes the discharge of wastewater from a septic tank meeting the requirements of R18-9-A314 to one of the following disposal works:
   a. Trench,
   b. Bed,
   c. Chamber technology, or
   d. Seepage pit.

B. Performance. An applicant shall design a system consisting of a septic tank and one of the disposal works listed in subsection (A)(2) so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Design and installation requirements.

1. General provisions. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Ensure that the septic tank meets the requirements specified in R18-9-A314;
   b. Before placing aggregate or disposal pipe in a prepared excavation, remove all smeared or compacted surfaces from trenches by raking to a depth of 1 inch and removing loose material. The applicant shall:
      i. Place aggregate in the trench to the depth and grade specified in subsection (C)(2);
      ii. Place the drain pipe on aggregate and cover it with aggregate to the minimum depth specified in subsection (C)(2); and
      iii. Cover the aggregate with landscape filter material, geotextile, or similar porous material to prevent filling of voids with earth backfill;
   c. Use a grade board stake placed in the trench to the depth of the aggregate if the disposal pipe is constructed of drain tile or flexible pipe that will not maintain alignment without continuous support;
   d. Disposal pipe. If two or more disposal pipes are installed, install a distribution box approved by the Department of sufficient size to receive all lateral lines and flows at the head of each disposal works and:
      i. Ensure that the inverts of all outlets are level and the invert of the inlet is at least 1 inch above the outlets;
      ii. Design distribution boxes to ensure equal flow and install the boxes on a stable level surface such as a concrete slab or native or compacted soil; and
      iii. Protect concrete distribution boxes from corrosion by coating them with an appropriate bituminous coating, constructing the boxes with concrete that has a 15 to 18 percent fly ash content, or by using other equivalent means;
   e. Construct all lateral pipes running from a distribution box to the disposal works with watertight joints and ensure that multiple disposal laterals, wherever practical, are of uniform length;
   f. Lay pipe connections between the septic tank and a distribution box on natural ground or compact fill and construct the pipe connections with watertight joints;
   g. Construct steps within distribution line trenches or beds, if necessary, to maintain a level disposal pipe on sloping ground. The applicant shall construct the lines between each horizontal section with watertight joints and install them on natural or unfilled ground; and
   h. Ensure that a disposal works consisting of trenches, beds, chamber technology, or seepage pits is not paved over or covered by concrete or any material that can reduce or inhibit possible evaporation of wastewater through the soil to the land surface or oxygen transport to the soil absorption surfaces.
2. Trenches.
   a. The applicant shall calculate the trench absorption area as the total of the trench bottom area and the sum of both trench sidewall areas to a maximum depth of 48 inches below the bottom of the disposal pipe.
   b. The applicant shall ensure that trench bottoms and disposal pipe are level. The applicant shall calculate trench sizing from the soil absorption rate specified under R18-9-A312(D) and the design flow established in R18-9-A312(B).
   c. The following design criteria for trenches apply:

Trenches	**Minimum**	**Maximum**
1. Number of trenches	1 (2 are recommended)	No Maximum
2. Length of trench[1]	----	100 feet
3. Bottom width of trench	12 inches	36 inches
4. Trench absorption area (sq. ft. of absorption area per linear foot of trench)	No Minimum	11 sq. ft.
5. Depth of cover over aggregate surrounding disposal pipe	9 inches	24 inches[2]
6. Thickness of aggregate material over disposal pipe	2 inches	2 inches
7. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
8. Slope of disposal pipe	Level	Level
9. Disposal pipe diameter	3 inches	4 inches
10. Spacing of trenches (measured between nearest sidewalls)	2 times effective depth[3] or five feet, whichever is greater	No Maximum

Notes:
[1] If unequal trench lengths are used, proportional distribution of wastewater is required.
[2] For more than 24 inches, Standard Dimensional Ratio 35 or equivalent strength pipe is required.
[3] The effective depth is the distance between the bottom of the disposal pipe and the bottom of the trench bed.

d. The applicant may substitute clean, durable, crushed, and washed recycled concrete for aggregate if noted in design documents and the trench absorption area calculation excludes the trench bottom.

3. Beds. An applicant shall:
   a. If a bed is installed, use the soil absorption rate specified in R18-9-A312(D) for "SAR, Bed. The applicant may, in computing the bed bottom absorption area, include the bed bottom and the perimeter sidewall area not more than 36 inches below the disposal pipe;
   b. Comply with the following design criteria for beds:

Gravity Beds	Minimum	Maximum
1. Number of disposal pipes	2	No Maximum
2. Length of bed	No Minimum	100 feet
3. Distance between disposal pipes	4 feet	6 feet
4. Spacing of beds measured between nearest sidewalls	2 times effective depth[1] or 5 feet, whichever is greater	No Maximum
5. Width of bed	10 feet	12 feet
6. Distance from disposal pipe to sidewall	3 feet	3 feet
7. Depth of cover over disposal pipe	9 inches	14 inches
8. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
9. Thickness of aggregate material over disposal pipe	2 inches	2 inches
10. Slope of disposal pipe	Level	Level
11. Disposal pipe diameter	3 inches	4 inches

Note:
[1] The effective depth is the distance between the bottom of the disposal pipe and the bottom of the bed.

4. Chamber technology. An applicant shall:
   a. Calculate an effective chamber absorption area to size the disposal works area and determine the number of chambers needed. The effective absorption area of each chamber is calculated as follows:
      $A = (1.8 \times B \times L) + (2 \times V \times L)$
      i. "A" is the effective absorption area of each chamber,
      ii. "B" is the exterior width of the bottom of the chamber,
      iii. "V" is the vertical height of the louvered sidewall of the chamber, and
      iv. "L" is the length of the chamber;
   b. Calculate the disposal works size and number of chambers from the effective absorption area of each chamber and the soil absorption rates specified in R18-9-A312(D);
   c. Ensure that the sidewall of the chamber provides at least 35 percent open area for sidewall credit and that the design and construction minimizes the movement of fines into the chamber area. The applicant shall not use filter fabric or geotextile against the sidewall openings.

5. Seepage pits. If allowed by R18-9-A311(B)(1), the applicant shall:
   a. Design a seepage pit to comply with R18-9-A312(E)(1) for minimum vertical separation distance;
   b. Ensure that multiple seepage pit installations are served through a distribution box approved by the Department or connected in series with a watertight connection laid on undisturbed or compacted soil. The applicant shall ensure that the outlet from the pit has a sanitary tee with the vertical leg extending at least 12 inches below the inlet;
   c. Ensure that each seepage pit is circular and has an excavated diameter of 4 to 6 feet. If multiple seepage pits are installed, ensure that the minimum spacing between seepage pit sidewalls is 12 feet or three times the diameter of the seepage pit, whichever is greater. The applicant may use the alternative design procedure specified in R18-9-A312(G) for a proposed seepage pit more than 6 feet in diameter;
   d. For a gravel filled seepage pit, backfill the entire pit with aggregate. The applicant shall ensure that each pit has a breather conductor pipe that consists of a perforated pipe at least 4 inches in diameter, placed vertically within the backfill of the pit. The pipe shall extend from the bottom of the pit to within 12 inches below ground level;
   e. For a lined, hollow seepage pit, lay a concrete liner or a liner of a different protective material in the pit on a firm foundation and fill excavation voids behind the liner with at least 9 inches of aggregate;
   f. For the cover of a lined seepage pit, use an approved one or two piece reinforced concrete slab with a minimum compressive strength of 2500 pounds per square inch. The applicant shall ensure that the cover:
      i. Is at least 5 inches thick and designed to support an earth load of at least 400 pounds per square foot;
      ii. Has a 12-inch square or diameter minimum access hole with a plug or cap that is coated on the underside with an protective bituminous seal, constructed of concrete with 15 percent to 18 percent fly ash content, or made of other nonpermeable protective material; and
      iii. Has a 4 inch or larger inspection pipe placed vertically not more than 6 inches below ground level;
   g. Ensure that the top of the seepage pit cover is 4 to 18 inches below the surface of the ground;

h. Install a vented inlet fitting in every seepage pit to prevent flows into the seepage pit from damaging the sidewall. An applicant may use a 1/4 bend fitting placed through an opening in the top of the slab cover if a one or two piece concrete slab cover inlet is used;

i. Bore seepage pits five feet deeper than the proposed pit depth to verify underlying soil characteristics and backfill the five feet of overdrill with low permeability drill cuttings or other suitable material;

j. Backfill seepage pits that terminate in gravelly, coarse sand zones five feet above the beginning of the zone with low permeability drill cuttings or other suitable material;

k. Determine the minimum sidewall area for a seepage pit from the design flow and the soil absorption rate derived from the testing procedure described in R18-9-A310(G). The effective absorption surface for a seepage pit is the sidewall area only. The sidewall area is calculated using the following formula:

$A = 3.14 \times D \times H$

i. "A" is the minimum sidewall area in square feet needed for the design flow and soil absorption rate for the installation,

ii. "D" is the diameter of the proposed seepage pit in feet,

iii. "H" is the vertical height in feet in the seepage pit through which wastewater infiltrates native soil. The applicant shall ensure that H is at least 10 feet for any seepage pit.

D. Operation and maintenance. The permittee shall follow the applicable operation and maintenance requirements in R18-9-A313.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E303. 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

A. A 4.03 General Permit allows for the use of a composting toilet with less than 3000 gallons per day design flow.

1. Definition. For purposes of this Section, "composting toilet" means a manufactured turnkey or kit form treatment technology that receives human waste from a waterless toilet directly into an aerobic composting chamber where dehydration and biological activity reduce the waste volume and the content of nutrients and harmful microorganisms to an appropriate level for later disposal at the site or by other means.
2. An applicant may use a composting toilet if:
   a. Limited water availability prevents use of other types of on-site wastewater treatment facilities,
   b. Environmental constraints prevent the discharge of wastewater or nutrients to a sensitive area,
   c. Inadequate space prevents use of other systems,
   d. Severe site limitations exist that make other forms of treatment or disposal unacceptable, or
   e. The applicant desires maximum water conservation.
3. A permittee may use a composting toilet only if:
   a. Wastewater is managed as provided in this Section and, if gray water is separated and reused, the gray water reuse complies with18 A.A.C. 9, Article 7; and
   b. Soil conditions support subsurface disposal of all wastewater sources.

B. Restrictions.

1. A permittee shall ensure that no more than 50 persons per day use the composting toilet.
2. A composting toilet shall only receive human excrement unless the manufacturer's specifications allow the deposit of kitchen or other wastes into the toilet.

C. Performance. An applicant shall ensure that:

1. The composting toilet provides containment to prevent the discharge of toilet contents to the native soil except leachate, which may drain to the wastewater disposal works described in subsection (F);
2. The composting toilet limits access by vectors to the contained waste; and
3. Wastewater is disposed into the subsurface to prevent any wastewater from surfacing.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit the following information:

1. Composting toilet.
   a. The name and address of the composting toilet system manufacturer;
   b. A copy of the manufacturer's warranty, and the specifications for installation operation, and maintenance;
   c. The product model number;
   d. Composting rate, capacity, and waste accumulation volume calculations;
   e. Documentation of listing by a national listing organization indicating that the composting toilet meets the stated manufacturer's specifications for loading, treatment performance, and operation, unless the composting toilet is listed under R18-9-A309(E) or is a component of a reference design approved by the Department;
   f. The method of vector control;
   g. The planned method and frequency for disposing the composted human excrement residue; and
   h. The planned method for disposing of the drainage from the composting unit; and
2. Wastewater.
   a. The number of bedrooms in the dwelling or persons served on a daily basis, as applicable, and the corresponding design flow of the disposal works for the wastewater;
   b. The results from soil evaluation or percolation testing that adequately characterize the soils into which the wastewater will be dispersed and the locations of soil evaluation and percolation testing on the site plan; and
   c. The design for the disposal works in subsection (F), including the location of the interceptor, the location and configuration of the trench or bed used for wastewater dispersal, the location of connecting wastewater pipelines, and the location of the reserve area.

E. Design requirements for a composting toilet. An applicant shall ensure that:

1. The composting chamber is watertight, constructed of solid durable materials not subject to excessive corrosion or decay, and is constructed to exclude access by vectors;
2. The composting chamber has airtight seals to prevent odor or toxic gas from escaping into the building. The system may be vented to the outside;
3. The capacity of the chamber and rate of composting are calculated based on:
   a. The lowest monthly average chamber temperature; or
   b. The yearly average chamber temperature, if the composting toilet is designed to compost on a yearly cycle or longer; and
4. The composting system provides adequate storage of all waste produced during the months when the average temperature is below 55^{o}F, unless a temperature control device is installed to increase the composting rate and reduce waste volume.

F. Design requirements for the disposal works.
1. Interceptor. An applicant shall ensure that the design complies with the following:
   a. An interceptor may not accept human excreta or toilet wastewater;
   b. Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
   c. The interceptor is designed to remove grease, oil, fibers, and solids to ensure long-term performance of the trench or bed used for subsurface dispersal;
   d. The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
   e. Minimum interceptor size is based on design flow.
      i. For a dwelling, the following apply:

No. of Bedrooms	Design Flow (gallons per day)	Minimum Interceptor Size (gallons)	
		Kitchen Wastewater Only (All gray water sources are collected and reused)	Combined Non-Toilet Wastewater (Gray water is not separated and reused)
1 (7 fixture units or less)	90	42	200
1-2 (greater than 7 fixture units)	180	84	400
3	270	125	600
4	330	150	700
5	380	175	800
6	420	200	900
7	460	225	1000

      ii. For other than a dwelling, minimum interceptor size in gallons is 2.1 times the design flow from Table 1, Unit Design Flows.
2. Dispersal of wastewater. An applicant shall ensure that the design complies with the following:
   a. A trench or bed is used to disperse the wastewater into the subsurface;
   b. Sizing of the trench or bed is based on the design flow as determined in subsection (F)(1)(e), including all black and gray water, and an SAR determined under R18-9-A312(D);
   c. The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
   d. Other aspects of trench or bed design follow R18-9-E302, as applicable.
3. Setback distances. Setback distances are no less than 1/4 of the setback distances specified in R18-9-A312(C), but not less than 5 feet, except the setback distance from wells is 100 feet.

G. Operation and maintenance requirements. A permittee shall:
1. Composting toilet.
   a. Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
   b. Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;
   c. Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;
   d. If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;
   e. Ensure that only human waste, paper approved for septic tank use, and the amount of bulking material required for proper maintenance is introduced to the composting chamber. The permittee shall remove all other materials or trash. If allowed by the manufacturer's specifications the permittee may add, other nonliquid compostable food preparation residues to the toilet;
   f. Ensure that any liquid end product is:
      i. Sprayed back onto the composting waste material;
      ii. Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or
      iii. Is drained to the interceptor described in subsection (F);
   g. Remove and dispose of composted waste as necessary, using a person who licensed a vehicle under 18 A.A.C. 13, Article 11 if the waste is not placed in a disposal area for burial or used on-site as mulch;
   h. Before ending use for an extended period take measures to ensure that moisture is maintained to sustain bacterial activity and free liquids in the chamber do not freeze; and
   i. After an extended period of non-use, empty the composting chamber of solid end product and inspect all mechanical components to verify that the mechanical components are operating as designed;
2. Wastewater Disposal Works.

a. Ensure that the interceptor is maintained regularly according to manufacturer's instructions to prevent grease and solid wastes from impairing performance of the trench or bed used for dispersal of wastewater, and
b. Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.

H. Reference design.
1. An applicant may use a composting toilet that achieves the performance requirements in subsection (C) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E304. 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.04 General Permit allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "pressure distribution system" means a tank, pump, controls, and piping that conducts wastewater under pressure in controlled amounts and intervals to a bed or trench or other means of distribution authorized by a general permit for an on-site wastewater treatment facility.
2. An applicant may use a pressure distribution system if a gravity flow system is unsuitable, inadequate, unfeasible, or cost prohibitive because of site limitations or other conditions, or if needed to optimally distribute wastewater.

B. Performance. An applicant shall ensure that a pressure distribution system:
1. Disperses wastewater so that:
   a. Loading rates are optimized for the intended purpose, and
   b. The wastewater is delivered under pressure and evenly distributed within the disposal works, and
2. Prevents ponding on the land surface.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit:
1. A copy of operation, maintenance, and warranty materials for the principal components; and
2. A copy of dosing specifications, including pump curves, dispersing component details, and float control settings.

D. Design requirements.
1. Pumps. An applicant shall ensure that pumps used in the on-site wastewater treatment facility:
   a. Are rated for wastewater service by the manufacturer and certified by Underwriters Laboratories;
   b. Achieve the minimum design flow rate and total dynamic head requirements for the particular site; and
   c. Incorporate a quick disconnect using compression-type unions for pressure connections. The applicant shall ensure that:
      i. Quick-disconnects are accessible in the pressure piping, and
      ii. A pump has adequate lift attachments for removal and replacement of the pump and switch assembly without entering the dosing tank or process chamber.
2. Switches, controls, alarms, timers, and electrical components. An applicant shall ensure that:
   a. Switches and controls accommodate the minimum and maximum dose capacities of the distribution network design. The applicant shall not use pressure diaphragm level control switches;
   b. Fail-safe controls that can be tested in the field are used to prevent discharge of inadequately treated wastewater. The applicant shall include counters or flow meters if critical to control functions, such as timed dosing;
   c. Control panels and alarms:
      i. Are either mounted in an exterior location visible from the structure served, mounted in a conspicuous location on the side of the structure served, or mounted in a conspicuous location adjacent to the structure served,
      ii. Provide manual pump switch and alarm test features, and
      iii. Include written instructions covering standard operation and alarm events;
   d. Audible and visible alarms are used for all critical control functions, such as pump failures, treatment failures, and excess flows. The applicant shall ensure that:
      i. The visual portion of the signal is conspicuous from a distance 50 feet from the system and its appurtenances;
      ii. The audible portion of the signal is between 70 and 75 db at 5 feet and is discernible from a distance of 50 feet from the system and its appurtenances;
      iii. Alarms, test features, and controls are on a non-dedicated electrical circuit separate from the dedicated circuit for the pump with constant visual confirmation that the circuit is electrically active; and
      iv. The alarm is clearly audible and visible inside the structure served;
   e. All electrical wiring complies with the National Electrical Code, 2005 Edition, published by the National Fire Protection Association. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The applicant shall ensure that:
      i. Connections are made using National Electrical Manufacturers Association (NEMA) 4x junction boxes certified by Underwriters Laboratories; and

ii. All controls are in NEMA 3r, 4, or 4x enclosures for outdoor use.

3. Dosing tanks and wastewater distribution components.
   a. An applicant shall:
      i. Design dosing tanks to withstand anticipated internal and external loads under full and empty conditions, and design concrete tanks to meet the "Standard Specification for Precast Concrete Water and Wastewater Structures, C913-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
      ii. Design dosing tanks to be easily accessible and have secured covers;
      iii. Install risers to provide access to the inlet and outlet of the tank and to service internal components;
      iv. Ensure that the volume of the dosing tank accommodates bottom depth below maximum drawdown, maximum design dose, including any drainback, volume to high water alarm, and a reserve volume above the high water alarm level that is not less than the daily design flow volume. If the tank is time dosed, the applicant shall ensure that the combined surge capacity and reserve volume above the high water alarm is not less than the daily design flow volume;
      v. Ensure that dosing tanks are watertight and anti-buoyant;
      vi. Design the wastewater distribution components to withstand system pumping pressures;
      vii. Design the wastewater distribution system to allow air to purge from the system;
      viii. Design pressure piping to minimize freezing during cold weather;
      ix. Ensure that the end of each wastewater distribution line is accessible for maintenance;
      x. Ensure that orifices emit the design discharge rate uniformly throughout the wastewater distribution system; and
      xi. Design orifices using orifice shields to provide proper distribution of wastewater to the receiving medium.
   b. An applicant may use a septic tank second compartment or a second septic tank in series as a dosing tank if all dosing tank requirements of this Section are met and a screened vault is used instead of the septic tank effluent filter.
4. Design SAR. If the site conditions of the property for the on-site wastewater treatment facility do not require pressure distribution, but an applicant chooses to use pressure distribution, the applicant shall use a design SAR for the absorption surfaces in the disposal works that is not more than 1.10 times the adjusted SAR determined in R18-9-A312(D).

E. Additional Discharge Authorization requirements. An applicant shall obtain copies of instructions for the critical controls of the system from the person who installed the pressure distribution system. The applicant shall submit one copy of the instructions with the information required in subsection (C).

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), a permittee shall ensure that:
1. The operation and maintenance manual for the on-site wastewater treatment facility that supplies the wastewater to the pressure distribution system specifies inspection and maintenance needed for the following items:
   a. Sludge level in the bottom of the treatment and dosing tanks,
   b. Watertightness,
   c. Condition of electrical and mechanical components, and
   d. Piping and other components functioning within design limits;
2. All critical control functions are specified in the operation and maintenance manual for testing to demonstrate compliance with design specifications, including:
   a. Alarms, test features, and controls;
   b. Float switch level settings;
   c. Dose rate, volume, and frequency, if applicable;
   d. Distal pressure or squirt height, if applicable; and
   e. Voltage test on pumps, motors, and controls, as applicable;
3. The finished grade is observed and maintained for proper surface drainage. The applicant shall observe the levelness of the tank for differential settling. If there is settling, the applicant shall grade the facility to maintain surface drainage.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E305. 4.05 General Permit: Gravelless Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.05 General Permit allows for the use of a gravelless trench with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "gravelless trench" means a disposal technology characterized by installation of a proprietary pipe and geocomposite or other substitute media into native soil instead of the distribution pipe and aggregate fill used in a trench allowed in R18-9-E302.
2. A permittee may use a gravelless trench if suitable gravel or volcanic rock aggregate is unavailable, excessively expensive, or if adverse site conditions make movement of gravel difficult, damaging, or time consuming.

B. Performance. An applicant shall design a gravelless trench so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;

3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit the following:
1. The soil absorption area that would be required if a conventional disposal trench filled with aggregate was used at the site,
2. The configuration and size of the proposed gravelless disposal works, and
3. The manufacturer's installation instructions and warranty of performance for absorbing wastewater into the native soil.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the top of the gravelless disposal pipe or similar disposal mechanism is at least 6 inches below the surface of the native soil and 12 to 36 inches below finished grade if approved fill is placed on top of the installation;
2. Calculate the infiltration surface as follows:
   a. For 8-inch diameter pipe, 2 square feet of absorption area is allowed per linear foot;
   b. For 10-inch diameter pipe, 3 square feet of absorption area is allowed per linear foot;
   c. For bundles of two pipes of the same diameter, the absorption area is calculated as 1.67 times the absorption area of one pipe; and
   d. For bundles of three pipes of the same diameter, the absorption area is calculated as 2.00 times the absorption area of one pipe;
3. Use a pressure distribution system meeting the requirements of R18-9-E304 in medium sand, coarse sand, and coarser soils; and
4. Construct the drainfield of material that will not decay, deteriorate, or leach chemicals or byproducts if exposed to sewage or the subsurface soil environment.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Install the gravelless pipe material according to manufacturer's instructions if the instructions are consistent with this Chapter,
2. Ensure that the installed disposal system can withstand the physical disturbance of backfilling and the load of any soil cover above natural grade placed over the installation, and
3. Shape any backfill and soil cover in the area of installation to prevent settlement and ponding of rainfall for the life of the disposal works.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade in the vicinity of the gravelless disposal works for maintenance of proper drainage and protection from damaging loads.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E306. 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.06 General Permit allows for the use of a natural seal evapotranspiration bed with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "natural seal evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system, contained on the bottom and sidewalls by an engineered liner consisting of natural soil and clay materials.
2. An applicant may use a natural seal evapotranspiration bed if site conditions restrict soil infiltration or require reduction of the volume of wastewater discharged to the native soil underlying the natural seal liner.

B. Restrictions. Unless a person provides design documentation to show that a natural seal evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of the average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a natural seal evapotranspiration bed:
1. Minimizes discharge to the native soil through the natural seal liner,
2. Maximizes wastewater disposed to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. An applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and shall calculate the bed design based on the capillary rise of the bed media, following the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2000)," incorporated by reference in R18-9-E307(E), and the anticipated maximum frost depth;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months and the design seepage rate;
4. Ensure that the natural seal liner is a durable, low-hydraulic conductivity liner and is accompanied by the liner performance specification and calculations for bottom and sidewall seepage rate;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches and ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;

ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
iii. The pH of the topsoil is between 5.5 and 8.0;
iv. The plasticity index of the topsoil is between 3 and 15; and
v. The topsoil contains approximately 1-1/2 percent organic matter, by dry weight, either natural or added;

b. If landscaping material other than topsoil is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt- and drought-tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to determine the level of the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the natural seal evapotranspiration bed liner to the seasonal high water table is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The liner covers the bottom and all sidewalls of the bed and is installed on a stable base according to the manufacturer’s installation specifications;
2. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
3. The liner is leak tested under the supervision of an Arizona-registered professional engineer to confirm the design leakage rate; and
4. A 2- to 4-inch layer of 1/2- to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall ensure that the filter cloth is placed on top of the gravel or crushed stone to prevent sand from settling into the gravel or crushed stone.

G. Additional Discharge Authorization requirements. An applicant shall submit the satisfactory results of the leakage test required under subsection (F)(3) to the Department before the Department issues the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed, and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E307. 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.07 General Permit allows for the use of a lined evapotranspiration bed receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a “lined evapotranspiration bed” means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system contained on the bottom and sidewalls by an impervious synthetic liner.
2. An applicant may use a lined evapotranspiration bed if site conditions restrict soil infiltration or require reduction or elimination of the volume of wastewater or nitrogen load discharged to the native soil.
3. Provision of a reserve area is not required for a lined evapotranspiration bed.

B. Restrictions. Unless a person provides design documentation to show that a lined evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a lined evapotranspiration bed:
1. Prevents discharge to the native soil by a synthetic liner,
2. Attains full disposal of wastewater to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter in size) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and calculate the bed design on the basis of the capillary rise of the bed media, according to the “Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2003),” published by the American Society for Testing and Materials and the anticipated maximum frost depth. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months;

4. Ensure that the evapotranspiration bed liner is a durable, low hydraulic conductivity synthetic liner that has a calculated bottom area and sidewall seepage rate of less than 550 gallons per acre per day;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches. The applicant shall ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1 1/2 percent organic matter, by dry weight, either natural or added;
   b. If another landscaping material is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt and drought tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to allow determination of the depth to the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the evapotranspiration bed liner to the surface of the seasonal high water table or impervious layer or formation is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. All liner seams are factory fabricated or field welded according to manufacturer’s specifications. The applicant shall ensure that:
2. The liner covers the bottom and all sidewalls of the bed and is cushioned on the top and bottom with layers of sand at least 2 inches thick or other puncture-protective material;
3. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
4. The liner is leak tested under the supervision of an Arizona-registered professional engineer; and
5. A 2- to 4-inch layer of one-half to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall place filter cloth on top of the gravel or crushed stone to prevent sand from settling into the crushed stone or gravel.

G. Additional Discharge Authorization requirements. An applicant shall submit the liner test results sealed by an Arizona-registered professional engineer to the Department for issuance of the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed; and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E308. 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow

A. A 4.08 General Permit allows for the use of a Wisconsin mound with a design flow of less than 3000 gallons per day receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a “Wisconsin mound” means a disposal technology characterized by:
   a. An above-grade bed system that blends with the land surface into which is dispensed pressure dosed wastewater from a septic tank or other upstream treatment device,
   b. Dispersal of wastewater under unsaturated flow conditions through the engineered media system contained in the mound, and
   c. Wastewater treated by passage through the mound before percolation into the native soil below the mound.
2. An applicant may use a Wisconsin mound if:
   a. The native soil has excessively high or low permeability,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. A reduction in minimum vertical separation is desired.

B. Performance. An applicant shall design a Wisconsin mound so that treated wastewater released to the native soil meets the following criteria:
1. Performance Category A.
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1000 (Log_{10} 3.0) colony forming units per 100 milliliters, 95th percentile; or
2. Performance Category B.
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the internal wastewater distribution system media proposed for use in the Wisconsin mound;
2. Two scaled or dimensioned cross sections of the mound (one of the shortest basal area footprint dimension and one of the lengthwise dimension); and
3. Design calculations following the "Wisconsin Mound Soil Absorption System: Siting, Design, and Construction Manual," published by the University of Wisconsin – Madison, January 1990 Edition (the Wisconsin Mound Manual). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the University of Wisconsin – Madison, SSWMP, 1525 Observatory Drive, Room 345, Madison, WI 53706.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressure dosed wastewater is delivered into the Wisconsin mound through a pressurized line and secondary distribution lines into an engineered aggregate infiltration bed, or equivalent system, in conformance with R18-9-E304 and the Wisconsin Mound Manual. The applicant shall ensure that the aggregate is washed;
2. Wastewater is applied to the inlet surface of the mound media at not more than 1.0 gallon per day per square foot of mound bed inlet surface if the mound bed media conforms with the "Standard Specification for Concrete Aggregates, C33-03 (2003)," published by the American Society for Testing and Materials and the Wisconsin Mound Manual, except if cinder sand is used that is the appropriate grade with not more than 5 percent passing a #200 screen. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. The applicant shall:
   a. For cinder sand, ensure that the rate is not more than 0.8 gallons per day per square foot of mound bed inlet surface; and
   b. Wash the media used for the mound bed;
3. The aggregate infiltration bed and mound bed is capped by coarser textured soil, such as sand, sandy loam, or silt loam. An applicant shall not use silty clay, clay loam, or clays;
4. The cap material is covered by topsoil, following the procedure in the Wisconsin Mound Manual, and the topsoil is capable of supporting vegetation, is not clay, and is graded to drain;
5. The top and bottom surfaces of the aggregate infiltration bed are level and do not exceed 10 feet in width and that:
   a. The minimum depth of the aggregate infiltration bed is 9 inches, or
   b. Synthetic filter fabric permeable to water and air and capable of supporting the cap and topsoil load is placed on the top surface of the aggregate infiltration bed;
6. The minimum depth of mound bed media is:
   a. Performance Category A, 24 inches; or
   b. Performance Category B, 12 inches;
7. The maximum allowable side slope of the mound bed, cap material, and topsoil is not more than one vertical to three horizontal;
8. Ports for inspection and monitoring are provided to verify performance, including verification of unsaturated flow within the aggregate infiltration bed. The applicant shall:
   a. Install a vertical PVC pipe and cap with a minimum diameter of 4 inches as an inspection port at the end of the disposal line, and
   b. Install the pipe with a physical restraint to maintain pipe position;
9. The main pressurized line and secondary distribution lines for the aggregate infiltration bed are equipped at appropriate locations with cleanouts to grade;
10. The following requirements and the setbacks specified in R18-9-A312(C) are observed:
   a. Increase setbacks for the following downslope features at least 30 feet from the toe of the mound system:
      i. Property line,
      ii. Driveway,
      iii. Building,
      iv. Ditch or interceptor drain, or
      v. Any other feature that impedes water movement away from the mound; and
   b. Ensure that no upslope natural feature or improvement channels surface water or groundwater to the mound area;
11. The portion of the basal area of native soil below the mound conforms to the Wisconsin Mound Manual. The applicant shall:
   a. Calculate the absorption of wastewater into the native soil for only the effective basal area;
   b. Apply the soil absorption rate specified in R18-9-A312(D). The applicant may increase allowable loading rate to the mound bed inlet surface up to 1.6 times if the wastewater dispersed to the mound is pretreated to reduce the sum of TSS and BOD_5 to 60 mg/l or less. The applicant may increase the soil absorption rate to not more than 0.20 gallons per day per square foot of basal area if the following slowly permeable soils underlie the mound:
      i. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure; or
      ii. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure;
12. The slope of the native soil at the basal area does not exceed 25 percent, and a slope stability analysis is performed whenever the basal area or site slope within 50 horizontal feet from the mound system footprint exceeds 15 percent.

E. Installation. An applicant shall:
1. Prepare native soil for construction of a Wisconsin mound system. The applicant shall:
   a. Mow vegetation and cut down trees in the vicinity of the basal area site to within 2 inches of the surface;
   b. Leave in place boulders and tree stumps and other herbaceous material that would excessively alter the soil structure if removed after mowing and cutting;

c. Plow native soil serving as the basal area footprint along the contours to 7- to 8- inch depth;
d. Not substitute rototilling for plowing; and
e. Begin mound construction immediately after plowing;

2. Place each layer of the bed system to prevent differential settling and promote uniform density; and
3. Use the Wisconsin Mound Manual to guide any other detail of installation. The applicant may vary installation procedures and criteria depending on mound design but shall use installation procedures and criteria that are at least equivalent to those in the Wisconsin Mound Manual.

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), the permittee shall:

1. If an existing mound system shows evidence of overload or hydraulic failure, conduct the following sequence of evaluations:
   a. Verify the actual loading and performance of the pretreatment system.
   b. Verify the watertightness of the pretreatment and dosing tanks;
   c. Determine the dosing rates and dosing intervals to the aggregate infiltration bed and compare it with the original design to evaluate the presence or absence of saturated conditions in the aggregate infiltration bed;
   d. If the above steps in subsections (F)(1)(a) through (c) do not indicate an anomalous condition, evaluate the site and recalculation of the disposal capability to determine if mound lengthening is feasible;
   e. Determine if site modifications are possible including changing surface drainage patterns at upgrade locations and lowering the groundwater level by installing interceptor drains to reduce native soil saturation at shallow levels; and
   f. Determine if the basal area can be increased, consistent with R18-9-A309(A)(9)(b)(iv);
2. Prepare servicing and waste disposal procedures and task schedules necessary for clearing the main pressurized wastewater line and secondary distribution lines, septic tank effluent filter, pump intake, and controls.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E309. 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.09 General Permit allows for the use of an engineered pad system receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "engineered pad system" means a treatment and disposal technology characterized by:
   a. The delivery of pretreated wastewater by gravity or pressure distribution to the engineered pad and sand bed assembly, followed by dispersal of the wastewater into the native soil; and
   b. Wastewater movement through the engineered pad and sand bed assembly by gravity under unsaturated flow conditions to provide additional passive biological treatment.
2. The applicant may use an engineered pad system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The available area is limited for installing a disposal works authorized by R18-9-E302.

B. Performance. An applicant shall ensure that:

1. The engineered pad system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 50 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 50 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile; or
2. The engineered pad system is designed to meet any other performance, loading rate, and configuration criteria specified in the reviewed product list maintained by the Department as required under R18-9-A309(E).

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit design materials and construction specifications for the engineered pad system.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. Gravity and pressurized wastewater delivery is from a septic tank or intermediate watertight chamber equipped with a pump and controls. The applicant shall ensure that:
   a. Delivered wastewater is distributed onto the top of the engineered pad system and achieves even distribution by good engineering practice, and
   b. The dosing rate for pressurized wastewater delivery is at least four doses per day and no more than 24 doses per day;
2. The sand bed consists of mineral sand washed to conform to the "Standard Specification for Concrete Aggregates, C33-03 (2003)," which is incorporated by reference in R18-9-E308(D)(2), unless the performance testing and design specifications of the engineered pad manufacturer justify a substitute specification. The applicant shall ensure that:
   a. The sand bed design provides for the placement of at least 6 inches of sand bed material below and along the perimeter of each pad, and
   b. The contact surface between the bottom of the sand bed and the native soil is level;
3. The spacing between adjacent two-pad-wide rows is at least two times the distance between the bottom of the distribution pipe and the bottom of the sand bed or 5 feet, whichever is greater;
4. The wastewater distribution system installed on the top of the engineered pad system is covered with a breathable geotextile material and the breathable geotextile material is covered with at least 10 inches of backfill.
   a. The applicant shall ensure that rocks and cobbles are removed from backfill cover and grade the backfill for drainage.

b. The applicant may place the engineered pad system above grade, partially bury it, or fully bury it depending on site and service circumstances;

5. The engineered pad system is constructed with durable materials and capable of withstanding stress from installation and operational service; and
6. At least two inspection ports are installed in the engineered pad system to confirm unsaturated wastewater treatment conditions at diagnostic locations.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place sand media to obtain a uniform density of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), an applicant shall inspect the backfill cover for physical damage or erosion and promptly repair the cover, if necessary.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (B)(2) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E310. 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.10 General Permit allows for the use of an intermittent sand filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "intermittent sand filter" means a treatment technology characterized by:
   a. The pressurized delivery of pretreated wastewater to an engineered sand bed in a containment vessel equipped with an underdrain system or designed as a bottomless filter;
   b. Delivered wastewater dispersed throughout the sand media by periodic doses from the delivery pump to maintain unsaturated flow conditions in the bed; and
   c. Wastewater that is treated during passage through the media, collected by a bed underdrain chamber, and removed by pump or gravity to the disposal works, or wastewater that percolates downward directly into the native soil as part of a bottomless filter design.
2. An applicant may use an intermittent sand filter if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The applicant desires a reduction in setback distances or minimum vertical separation.

B. Performance. An applicant shall ensure that:

1. An intermittent sand filter with underdrain system is designed so that it produces treated wastewater that meets the following criteria:
   a. TSS of 10 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 10 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 40 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level or 1000 (Log_{10} 3) colony forming units per 100 milliliters, 95th percentile; or
2. An intermittent sand filter with a bottomless filter is designed so that it produces treated wastewater released to the native soil that meets the following criteria:
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
   d. Total coliform level of 100,000 (Log_{10} 5 colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the media proposed for use in the intermittent sand filter.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. Pressurized wastewater delivery is from the septic tank or separate watertight chamber with a pump sized and controlled to deliver the pretreated wastewater to the top of the intermittent sand filter. The applicant shall ensure that the dosing rate is at least 4 doses per day and not more than 24 doses per day;
2. The pressurized wastewater delivery system provides even distribution in the sand filter through good engineering practice. The applicant shall:
   a. Specify all necessary controls, pipes, valves, orifices, filter cover materials, gravel, or other distribution media, and monitoring and servicing components in the design documents; and
   b. Ensure that the cover and topsoil is 6 to 12 inches in depth and graded to drain;
3. The sand filter containment vessel is watertight, structurally sound, durable, and capable of withstanding stress from installation and operational service. The applicant may place the intermittent sand filter above grade, partially buried, or fully buried depending on site and service circumstances;
4. Media used in the intermittent sand filter is mineral sand and that the media is washed and conforms to "Standard Specification for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2);
5. The sand media depth is a minimum of 24 inches with the top and bottom surfaces level and the maximum wastewater loading rate is 1.0 gallons per day per square foot of inlet surface at the rated daily design flow;
6. The underdrain system:
   a. Is within the containment vessel;
   b. Supports the filter media and all overlying loads from the unsupported construction above the top surface of the sand media;
   c. Has sufficient void volume above the normal high level of the intermittent sand filter effluent to prevent saturation of the bottom of the sand media by a 24-hour power outage or pump malfunction; and
   d. Includes necessary monitoring, inspection, and servicing features;
7. Inspection ports are installed in the distribution media and in the underdrain;
8. The bottomless filter is designed similar to the underdrain system, except that the sand media is positioned on top of the native soil absorption surface. The applicant shall ensure that companion modifications are made that eliminate the containment vessel bottom and underdrain and

relocate the underdrain inspection port to ensure reliable indication of the presence or absence of water saturation in the sand media;

9. The native soil absorption system is designed to ensure that the linear loading rate does not exceed site disposal capability; and
10. The bottomless sand filter discharge rate per unit area to the native soil does not exceed the adjusted soil absorption rate for the quality of wastewater specified in subsection (B)(2).

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place the containment vessel, underdrain system, filter media, and pressurized wastewater distribution system in an excavation with adequate foundation and each layer installed to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter within the sand media.

F. Operation and maintenance requirements. The applicant shall follow the applicable requirements in R18-9-A313(B).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E311. 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.11 General Permit allows for the use of a peat filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "peat filter" means a disposal technology characterized by:
   a. The dosed delivery of treated wastewater to the peat bed, which can be a manufactured module or a disposal bed excavated in native soil and filled with compacted peat;
   b. Wastewater passing through the peat that is further treated by removal of positively charged molecules, filtering, and biological activity before entry into native soil; and
   c. If the peat filter system is constructed as a disposal bed filled with compacted peat, wastewater that is absorbed into native soil at the bottom and sides of the bed.
2. An applicant may configure a modular system if a portion of the wastewater that has passed through the peat filter is recirculated back to the pump chamber.
3. An applicant may use a peat filter system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock,
   c. A reduction in setback distances or minimum vertical separation is desired, or
   d. Cold weather inhibits performance of other treatment or disposal technologies.

B. Performance. An applicant shall ensure that a peat filter is designed so that it produces treated wastewater that meets the following criteria:

1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. Specifications for the peat media proposed for use in the peat filter or provided in the peat module, including:
   a. Porosity;
   b. Degree of humification;
   c. pH;
   d. Particle size distribution;
   e. Moisture content;
   f. A statement of whether the peat is air dried, and whether the peat is from sphagnum moss or bog cotton; and
   g. A description of the degree of decomposition;
2. Specifications for installing the peat media; and
3. If a peat module is used:
   a. The name and address of the manufacturer,
   b. The model number, and
   c. A copy of the manufacturer's warranty.

D. Design requirements.

1. If a pump tank is used to dose the peat module or bed, an applicant shall:
   a. Ensure that the pump tank is sized to contain the dose volume and a reserve volume above the high water alarm that will contain the volume of daily design flow; and
   b. Use a control panel with a programmable timer to dose at the applicable loading rate.
2. Peat module system. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Size the gravel bed supporting the peat filter modules to allow it to act as a disposal works and ensure that the bed is level, long, and narrow, and installed on contour to optimize lateral movement away from the disposal area;
   b. For modules designed to allow wastewater flow through the peat filter and base material into underlying native soil, size the base on which the modules rest to accommodate the soil absorption rate of the native soil;
   c. Place fill over the module so that it conforms to the manufacturer's specification. If the fill is planted, the applicant shall use only grass or shallow rooted plants; and
   d. Ensure that the peat media depth is at least 24 inches, the peat is installed with the top and bottom surfaces level, and the maximum wastewater loading rate is 5.5 gallons per day per square foot of inlet surface at the rated daily design flow, unless the Department approves a different wastewater loading rate under R18-9-A309(E).
3. Peat filter bed system. In addition to the applicable requirements in R18-9-A312, the applicant shall ensure that:
   a. The bed is filled with peat derived from sphagnum moss and compacted according to the installation specification;
   b. The maximum wastewater loading rate is 1 gallon per day per square foot of inlet surface at the rated daily design flow;
   c. At least 24 inches of installed peat underlies the distribution piping and 10 to 14 inches of installed peat overlies the piping;

d. The cover material over the peat filter bed is slightly mounded to promote runoff of rainfall. The applicant shall not place additional fill over the peat; and
e. The peat is air dried, with a porosity greater than 90 percent, and a particle size distribution of 92 to 100 percent passing a No. 4 sieve and less than 8 percent passing a No. 30 sieve.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), the applicant shall:
1. Peat module system.
   a. Compact the bottom of all excavations for the filter modules, pump, aerator, and other components to provide adequate foundation, slope the bottom toward the discharge to minimize ponding, and ensure that the bottom is flat, and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
   b. Place the peat filter modules on a level, 6-inch deep gravel bed;
   c. Place backfill around the modules and grade the backfill to divert surface water away from the modules;
   d. Not place objects on or move objects over the system area that might damage the module containers or restrict airflow to the modules;
   e. Cover gaps between modules to prevent damage to the system;
   f. Fit each system with at least one sampling port that allows collection of wastewater at the exit from the final treatment module;
   g. Provide the modules and other components with anti-buoyancy devices to ensure stability in the event of flooding or high water table conditions; and
   h. Provide a mechanism for draining the filter module inlet line; or
2. Peat filter bed system.
   a. Scarify the bottom and sides of the leaching bed excavation to remove any smeared surfaces, and:
      i. Unless directed by an installation specification consistent with this Chapter, place peat media in the excavation in 6-inch lifts; and
      ii. Compact each lift before the next lift is added. The applicant shall take care to avoid compaction of the underlying native soil;
   b. Lay distribution pipe in trenches cut in the compacted peat, and
      i. Ensure that at least 3 inches of aggregate underlie the pipe to reduce clogging of holes or scouring of the peat surrounding the pipe, and
      ii. Place peat on top of and around the sides of the pipes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade over the peat filter for proper drainage, protection from damaging loads, and root invasion of the wastewater distribution system and perform maintenance as needed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E312. 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.12 General Permit allows for the use of a textile filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "textile filter" means a disposal technology characterized by:
   a. The flow of wastewater into a packed bed filter in a containment structure or structures. The packed bed filter uses a textile filter medium with high porosity and surface area; and
   b. The textile filter medium provides further treatment by removing suspended material from the wastewater by physical straining, and reducing nutrients by microbial action.
2. An applicant may use a textile filter in conjunction with a two-compartment septic tank or a two-tank system if the second compartment or tank is used as a recirculation and blending tank. The applicant shall divert a portion of the wastewater flow from the textile filter back into the second tank for further treatment.
3. An applicant may use a textile filter if:
   a. Nitrogen reduction is desired,
   b. The native soil is excessively permeable,
   c. There is little native soil overlying fractured or excessively permeable rock, or
   d. A reduction in setback distances or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a textile filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean, or 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(4); and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. A copy of the manufacturer's filter warranty;
4. If the system is for nitrogen reduction to 15 milligrams per liter, five-month arithmetic mean, specifications on the nitrogen reduction performance of the filter system and corroborating third-party test data;
5. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life; and
6. If a pump or aerator is required for proper operation, the pump or aerator model number and a copy of the manufacturer's warranty.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The textile medium has a porosity of greater than 80 percent;
2. The wastewater is delivered to the textile filter by gravity flow or a pump;
3. If a pump is used to dose the textile filter, the pump and appurtenances meet following criteria:

a. The textile media loading rate and wastewater recirculation rate are based on calculations that conform with performance data listed in the reviewed product list maintained by the Department as required under R18-9-A309(E),
b. The tank and recirculation components are sized to contain the dose volume and a reserve volume above the high water level alarm that will contain the volume of daily design flow, and
c. A control panel with a programmable timer is used to dose the textile media at the applicable loading rate and wastewater recirculation rate.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Before placing the filter modules, slope the bottom of the excavation for the modules toward the discharge point to minimize ponding;
2. Ensure that the bottom of all excavations for the filter modules, pump, aerator, or other components is level and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
3. Provide the modules and other components with antibuoyancy devices to ensure they remain in place in the event of high water table conditions; and
4. Provide a mechanism for draining the filter module inlet line.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313, the permittee shall not flush corrosives or other materials known to damage the textile material into any drain that transmits wastewater to the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E313. 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow

A. A 4.13 General Permit allows for the use of a separated wastewater streams, denitrifying system for a dwelling.
1. Definition. For purposes of this Section a "denitrifying system using wastewater streams" means a gravity flow treatment and disposal system for a dwelling that requires separate plumbing drains for conducting dishwasher, kitchen sink, and toilet flush water to wastewater treatment tank "A" and all other wastewater to a wastewater treatment tank "B."
   a. Treated wastewater from tanks "A" and "B" is delivered to an engineered composite disposal bed system that includes an upper distribution pipe to deliver treated wastewater from tank "A" to a columnar celled, sand-filled bed.
   b. The wastewater drains downward into a sand bed, then into a pea gravel bed with an internal distribution pipe system that delivers the treated wastewater from tank "B."
   c. The entire composite bed is constructed within an excavation about 6 feet deep.
   d. The system operates under gravity flow from tanks "A" and "B."
   e. An engineered sampling assembly is installed at the midpoint of the disposal line run and at the base of the composite bed during construction to monitor system performance.
2. An applicant may use a separated wastewater streams, denitrifying system where total nitrogen reduction is required under this Article before release to the native soil.

B. Performance. An applicant shall ensure that a separated wastewater streams, denitrifying system is designed so that the treated wastewater released to the native soil meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The applicant shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a separated wastewater streams, denitrifying system achieving the performance requirements specified in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E314. 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

A. A 4.14 General Permit allows for the use of a sewage vault that receives sewage.
1. An applicant may use a sewage vault if a severe site or operational constraint prevents installation of a conventional septic tank and disposal works or any other on-site wastewater treatment facility allowed under this Article; or
2. An applicant may install a sewage vault as a temporary measure if connection to a sewer or installation of another on-site wastewater treatment facility occurs within two years of the connection or installation.

B. Performance. An applicant shall:
1. Not allow a discharge from a sewage vault to the native soil or land surface, and
2. Pump and dispose of vault contents at a sewage treatment facility or other sewage disposal mechanism allowed by law.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), except that a site investigation under R18-9-A309(B)(1) is not required if the reason for using a sewage vault is an operational constraint that exists irrespec-

tive of the results of a site investigation conducted under R18-9-A310(B).

D. Design requirements. In addition to the requirements in R18-9-A312, an applicant shall:
1. Install a sewage vault with a capacity that is at least 10 times the daily design flow determined by R18-9-A314(4)(a)(i),
2. Use design elements to prevent the buoyancy of the vault if installed in an area where a high groundwater table may impinge on the vault,
3. Test the sewage vault for leakage using the procedure under R18-9-A314(5)(d). The tank passes the water test if the water level does not drop over a 24-hour period,
4. Install an alarm or signal on the vault to indicate when 85 percent of the vault capacity is reached, and
5. Contract with a person who licensed a vehicle under 18 A.A.C. 13, Article 11 to pump out the vault on a schedule specified within the contract to ensure that the vault is pumped before full.

E. Installation, operation, and maintenance requirements. The applicant shall comply with the applicable installation, operation, and maintenance requirements in R18-9-A313(A) and (B).

F. Reference design.
1. An applicant may use a sewage vault that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed storage vault with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E315. 4.15 General Permit: Aerobic System Less Than 3000 Gallons Per Day Design Flow

A. A 4.15 General Permit allows for the construction and use of an aerobic system that uses aeration for treatment.
1. Definition. For purposes of this Section, an "aerobic system" means a treatment unit consisting of components that:
   a. Mechanically introduce oxygen to wastewater,
   b. Typically provide clarification of the wastewater after aeration, and
   c. Convey the treated wastewater by pressure or gravity distribution to the disposal works.
2. An applicant may use an aerobic system if:
   a. Enhanced biological processing is needed to treat wastewater with high organic content,
   b. A soil or site condition is not adequate for installation of a standard septic tank and disposal works under R18-9-E302,
   c. A highly treated wastewater amenable to disinfection is needed, or
   d. Nitrogen removal from the wastewater is needed and removal performance of the system is documented according to subsection (C)(6).

B. Performance.
1. An applicant shall ensure that the aerobic system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(6); and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.
2. An applicant may use an aerobic system that meets the following less stringent performance criteria if the aerobic technology is listed by the Department under R18-9-A309(E) and the Department bases its review and listing on the technology being less costly and simpler to operate when compared to other aerobic technologies:
   a. TSS of 60 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 60 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five month arithmetic mean per liter, if documented under subsection (C)(6); and
   d. Total coliform level of 1,000,000 (Log_{10} 7) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the aerobic system manufacturer;
2. The model number of the aerobic system;
3. Evidence of performance specified in subsection (B)(1) or (B)(2), as applicable;
4. A list of pretreatment components needed to meet performance requirements;
5. A copy of the manufacturer's warranty and operation and maintenance recommendations to achieve performance over a 20-year operational life; and
6. If the aerobic system will be used for nitrogen removal from the wastewater, either:
   a. Evidence of a valid product listing under R18-9-E309(E) indicating nitrogen removal performance, or
   b. Specifications and third party test data corroborating nitrogen reduction to the intended level.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The wastewater is delivered to the aerobic treatment unit by gravity flow either directly or by a lift pump;
2. An interceptor or other pretreatment device is incorporated if necessary to meet the performance criteria specified in subsection (B)(1) or (2), or if recommended by the manufacturer for pretreatment if a garbage disposal appliance is used;
3. A clarifier is provided after aeration for any treatment technology that achieves performance that is equal to or better than the performance criteria specified in subsection (B)(1); and
4. Ports for inspection and monitoring are provided to verify performance.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The installation of the aerobic treatment components conforms to manufacturer's specifications that do not conflict with Articles 1 and 3 of this Chapter and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c); and
2. Excavation and foundation work, and backfill placement is performed to prevent differential settling and adverse drainage conditions.

F. Operation and maintenance requirements. The permittee shall:
1. Follow the applicable requirements in R18-9-A313(B), and
2. Ensure that filters are cleaned and replaced as necessary.

G. Reference design.
1. An applicant may use an aerobic system that achieves the applicable performance requirements by following a reference design on file with the Department.
2. An applicant using a reference design shall submit, with the Notice of Intent to Discharge, supplemental information specific to the proposed installation on a form approved by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E316. 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.16 General Permit allows for the construction and use of a nitrate-reactive media filter receiving pretreated wastewater.
1. Definition. "Nitrate-reactive media filter" means a treatment technology characterized by:
   a. The application of pretreated, nitrified wastewater to a packed bed filter in a containment structure. A packed bed filter consists of nitrate-reactive media that receives pretreated wastewater under appropriate design and operational conditions, and
   b. The ability of the nitrate-reactive filter to further treat the nitrified wastewater by removing total nitrogen by chemical and physical processes.
2. An applicant shall use a nitrate-reactive media filter with a treatment or disposal works to pretreat and dispose of the wastewater.
3. An applicant may use a nitrate-reactive media filter if nitrogen reduction is required under this Article.

B. Restrictions. The applicant shall not use any product to supply pretreated wastewater to the nitrate-reactive media filter unless:
1. The product meets the pretreatment requirements for the filter based on product performance information in the product listing, and
2. The product is listed by the Department as a reviewed product under R18-9-A309(E).

C. Performance. An applicant shall ensure that a nitrate-reactive media filter is designed so that it produces treated wastewater that does not exceed the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 10 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. The manufacturer's requirements for pretreated wastewater supplied to the nitrate-reactive media filter;
4. The manufacturer's specifications for design, installation, and operation for the nitrate-reactive media filter system and appurtenances;
5. The manufacturer's warranty for the nitrate-reactive media filter system and appurtenances;
6. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life for the nitrate-reactive media filter system and appurtenances; and
7. The manufacturer name and model number for all appurtenances that significantly contribute to achieving the performance required in subsection (C).

E. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances conform with manufacturer's specifications,
2. The loading rate of pretreated wastewater to the nitrate-reactive media inlet surface meets the manufacturer's specification and does not exceed 5.00 gallons per day per square foot of media inlet surface area, and
3. The bed packed with nitrate reactive media is at least 24 inches thick.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances are installed according to manufacturer's specifications to achieve proper wastewater treatment, hydraulic performance, and operational life; and
2. Anti-buoyancy devices are installed when high water table or extreme soil saturation conditions are likely during operational life of the facility.

G. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and the manufacturer's specifications for the nitrite-reactive media filter, the permittee shall not dispose of corrosives or other materials that are known to damage the nitrate-reactive media filter system into the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E317. 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.17 General Permit allows for the use of a cap fill cover over a conventional trench disposal works receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "cap system" means a disposal technology characterized by:
   a. A soil cap, consisting of engineered fill placed over a trench that is not as deep as a trench allowed by R18-9-E302; and
   b. A design that compensates for reduced trench depth by maintaining and enhancing the infiltration of

wastewater into native soil through the trench sidewalls.

2. An applicant may use a cap system if:
   a. There is little native soil overlying fractured or excessively permeable rock, or
   b. A high water table does not allow the minimum vertical separation to be met by a system authorized by R18-9-E302.

B. Performance. An applicant shall ensure that the design soil absorption rate and vertical separation complies with this Chapter for a trench, based on the following performance, unless additional pretreatment is provided:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed cap fill material.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The soil texture from the natural grade to the depth of the layer or the water table that limits the soil for unsaturated wastewater flow is no finer than silty clay loam;
2. Cap fill material used is free of debris, stones, frozen clods, or ice, and is the same as or one soil group finer than that of the disposal site material, except that the applicant shall not use fill material finer than clay loam as an additive;
3. Trench construction.
   a. The trench bottom is at least 12 inches below the bottom of the disposal pipe and not more than 24 inches below the natural grade, and the trench bottom and disposal pipe are level;
   b. The aggregate cover over the disposal pipe is 2 inches thick and the top of the aggregate cover is level and not more than 9 inches above the natural grade;
   c. The cap fill cover above the top of the aggregate cover is at least 9 inches but not more than 18 inches thick. The applicant shall ensure that:
      i. The cap surface is protected to prevent erosion and sloped to route surface drainage around the ends of the trench; and
      ii. If the top of the aggregate is at or below the original ground surface, the cap surface has side slopes not more than one vertical to three horizontal; or
      iii. If the top of the aggregate is above the original ground surface, the horizontal extent of the finished fill edges is at least 10 feet beyond the nearest trench sidewall or endwall;
   d. The criteria for trench length, bottom width and spacing, and disposal pipe size is the same as that for the trench system prescribed in R18-9-E302;
   e. Permeable geotextile fabric is placed on the aggregate top, trench end, and sidewalls extending above natural grade;
   f. The native soil within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed a 12 percent slope if the top of the aggregate cover extends above the natural grade at any location along the trench length. The applicant shall ensure that the slope within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed 20 percent if the top of the aggregate cover does not extend above the natural grade;
   g. The fill material is compacted to a density of 90 percent of the native soil if the invert elevation of the disposal pipe is at or above the natural grade at any location along the trench length;
   h. At least one observation port is installed to the bottom of each cap fill trench;
   i. The effective absorption area for each trench is the sum of the trench bottom area and the sidewall area. The height of the sidewall used for calculating the sidewall area is the vertical distance between the trench bottom and the lowest point of the natural land surface along the trench length; and
   j. If the applicant uses correction factors for soil absorption rate under R18-9-A312(D)(3) and minimum vertical separation under R18-9-A312(E), additional wastewater pretreatment is provided.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall prepare the disposal site when high soil moisture is not present and equipment operations do not create platy soil conditions. The applicant shall:
1. Plow or scarify the fill area to disrupt the vegetative mat while avoiding smearing,
2. Construct trenches as specified in subsection (D)(3),
3. Scarify the site and apply part of the cap fill to the fill area and blend the fill with the scarified native soil within the contact layers, and
4. Follow the construction design specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect and repair the cap fill and other surface features as needed to ensure proper disposal function, proper drainage of surface water, and prevention of damaging loads on the cap.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E318. 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow

A. A 4.18 General Permit allows for the use of a constructed wetland receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. “Constructed wetland” means a treatment technology characterized by a lined excavation, filled with a medium for growing plants and planted with marsh vegetation. The treated wastewater flows horizontally through the medium in contact with the aquatic plants.
   a. As the wastewater flows through the wetland system, additional treatment is provided by filtering, settling, volatilization, and evapotranspiration.
   b. The wetland system allows microorganisms to break down organic material and plants to take up nutrients and other pollutants.

c. The wastewater treated by a wetland system is discharged to a subsurface soil disposal system.

2. An applicant may use a constructed wetland if further wastewater treatment is needed before disposal.

B. Performance. An applicant shall ensure that a constructed wetland is designed so that it produces treated wastewater that meets the following criteria:

1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 45 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The permittee shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.

1. An applicant may use a constructed wetland that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed constructed wetland with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E319. 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.19 General Permit allows for the use of a sand-lined trench receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "sand-lined trench" means a disposal technology characterized by:
   a. Engineered placement of sand or equivalently graded glass in trenches excavated in native soil,
   b. Wastewater dispersed throughout the media by pressure distribution technology as specified in R18-9-E304 using a timer-controlled pump in periodic uniform doses that maintain unsaturated flow conditions, and
   c. Wastewater treated during travel through the media and absorbed into the native soil at the bottom of the trench.
2. An applicant may use a sand-lined trench if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. Reduction in setback distances, or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a sand-lined trench is designed so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed media in the trench.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. The media used in the trench is mineral sand, crushed glass, or cinder sand and that:
   a. The media conforms to "Standard Specifications for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2), "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C117-04 (2004)," published by the American Society for Testing and Materials, or an equivalent method approved by the Department. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
   b. Sieve analysis complies with the "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C11704," which is incorporated by reference in subsection (D)(1)(a), or an equivalent method approved by the Department;
2. Trenches.
   a. Distribution pipes are capped on the end;
   b. The spacing between trenches is at least two times the distance between the bottom of the distribution pipe and the bottom of the trench or 5 feet, whichever is greater;
   c. The inlet filter media surface, wastewater distribution pipe, and bottom of the trench are level and the maximum effluent loading rate is not more than 1.0 gallon per day per square foot of sand media inlet surface;
   d. The depth of sand below the gravel layer containing the distribution system is at least 24 inches;
   e. The gravel layer containing the distribution system is 5 to 12 inches thick, at least 36 inches wide, and level;
   f. Permeable geotextile fabric is placed at the base of and along the sides of the gravel layer, as necessary. The applicant shall ensure that:
      i. Geotextile fabric is placed on top of the gravel layer, and
      ii. Any cover soil placed on top of the geotextile fabric is capable of maintaining vegetative growth while allowing passage of air;
   g. At least one observation port is installed to the bottom of each sand lined trench;
   h. If the trench is installed in excessively permeable soil or rock, at least 1 foot of loamy sand is placed in the trench below the filter media. The minimum vertical separation distance is measured from the bottom of the loamy sand; and

i. The trench design is based on the design flow, native soil absorption area at the trench bottom, minimum vertical separation below the trench bottom, design effluent infiltration rate at the top of the sand fill, and the adjusted soil absorption rate for the final effluent quality; and

3. The dosing system consists of a timer-controlled pump, electrical components, and distribution network and that:
   a. Orifice spacing on the distribution piping does not exceed 4 square feet of media infiltrative surface area per orifice, and
   b. The dosing rate is at least four doses per day and not more than 24 doses per day.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that the filter media is placed in the trench to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall ensure that:
1. The septic tank filter and pump tank are inspected and cleaned;
2. The dosing tank pump screen, pump switches, and floats are cleaned yearly and any residue is disposed of lawfully; and
3. Lateral lines are flushed and the liquid waste discharged into the treatment system headworks.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E320. 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

A. A 4.20 General Permit allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a). An applicant may use a disinfection device if:
1. The disinfection device kills the microorganisms by exposing the wastewater to heat, ultraviolet radiation, or a chemical disinfectant.
2. Some means of disinfection is required before discharge.
3. A reduction in harmful microorganisms, as represented by the total coliform level, is needed for surface or near surface disposal of the wastewater or reduction of the minimum vertical separation distance specified in R18-9-A312(E) is desired.

B. Restrictions.
1. Unless the disinfection device is designed to operate without electricity, an applicant shall not install the device if electricity is not permanently available at the site.
2. The 4.20 General Permit does not authorize a disinfection device that releases chemical disinfectants or disinfection byproducts harmful to plants or wildlife in the discharge area or causes a violation of an Aquifer Water Quality Standard.

C. Performance. An applicant shall ensure that:
1. A fail-safe wastewater control or operational process is incorporated to prevent a release of inadequately treated wastewater;
2. The performance of a disinfection device meets the level of disinfection needed for the type of disposal and produces effluent that:
   a. Is nominally free of coliform bacteria;
   b. Is clear and odorless, and
   c. Has a dissolved oxygen content of at least 6 milligrams per liter;

D. Design requirements. An applicant shall ensure that an on-site wastewater treatment facility with a disposal works designed to discharge to the land surface includes disinfection technology that conforms with the following requirements:
1. Chlorine disinfection.
   a. Available chlorine is maintained as indicated in the following table:

pH of Wastewater (s.u.)	Required Concentration of Available Chlorine in Wastewater (mg/L)	
	Wastewater to the Disinfection Device Meets a TSS of 30 mg/L and BOD5 of 30 mg/L	Wastewater to the Disinfection Device Meets a TSS of 20 mg/L and BOD5 of 20 mg/L
6	15 – 30	6 – 10
7	20 – 35	10 – 20
8	30 – 45	20 – 35

   b. The minimum chlorine contact time is 15 minutes for wastewater at 70°F and 30 minutes for wastewater at 50°F, based on a flow equal to four times the daily design flow;
2. Contact chambers are watertight and made of plastic, fiberglass, or other durable material and are configured to prevent short-circuiting; and
3. For a device that disinfects by another method other than chlorine disinfection, dose and contact time are determined to reliably produce treated wastewater that is nominally free of coliform bacteria, based on a flow equal to four times the daily design flow.

E. Operation and maintenance. A permittee shall ensure that:
1. If the disinfection device relies on the addition of chemicals for disinfection, the device is operated to minimize the discharge of disinfection chemicals while achieving the required level of disinfection; and
2. The disinfection device is inspected and maintained at least once every three months by a qualified person.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E321. 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.21 General Permit allows for surface application of treated wastewater that is nominally free of coliform bacteria produced by the treatment works of an on-site wastewater treatment facility.

B. Performance. An applicant shall ensure that the treated wastewater distributed for surface application meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean;
4. Is nominally free of total coliform bacteria as indicated by a total coliform level of Log_{10} 0 colony forming units per 100 milliliters, 95th percentile.

C. Restrictions. The applicant shall not install the disposal works if weather records indicate that:
1. Average minimum temperature in any month is 20°F or less, or
2. Over 1/3 of the average annual precipitation falls in a 30-day period.

D. Design requirements. An applicant shall ensure that:
1. The land surface application rate does not exceed the lowest application rate as determined under R18-9-A312(D) minus no greater than 50 percent of the evapotranspiration that may occur during the month with the least evapotranspiration in any soil zone within the top 5 feet of soil;
2. The design incorporates sprinklers, bubbler heads, or other dispersal components that optimize wastewater loading rates and prevent ponding on the land surface;
3. The design specifies containment berms:
   a. Compacted to a minimum of 95 percent Proctor;
   b. Designed to contain the runoff of the 10-year, 24-hour storm event in addition to the daily design flow; and
   c. Designed to remain intact in the event of a more severe rainfall event; and
4. The design incorporates placement of signage on hose bibs, human ingress points to the surface disposal area, and at intervals around the perimeter of the surface disposal area to provide notification of use of treated wastewater and a warning against ingestion.

E. Installation requirements. An applicant shall ensure that installation of the wastewater dispersal components conforms to manufacturer's specifications that do not conflict with this Article and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance. In addition to the requirements specified in R18-9-A313(B), the permittee shall operate and maintain the surface disposal works to:
1. Prevent treated wastewater from coming into contact with drinking fountains, water coolers, or eating areas;
2. Contain all treated wastewater within the bermed area; and
3. Ensure that hose bibs discharging treated wastewater are secured to prevent use by the public.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E322. 4.22 General Permit: Subsurface Drip Irrigation Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.22 General Permit allows for the construction and use of a subsurface drip irrigation disposal works that receives high quality wastewater from an on-site wastewater treatment facility to dispense the wastewater to an irrigation system that is buried at a shallow depth in native soil. A 4.22 General Permit includes a pressure distribution system under R18-9-E304.
1. The subsurface drip irrigation disposal works is designed to disperse the treated wastewater into the soil under unsaturated conditions by pressure distribution and timed dosing. The applicant shall ensure that the pressure distribution system meets the requirements specified in R18-9-E304, and the Department shall consider whether the requirements of R18-9-E304 are met when processing the application under R18-9-A301(B).
2. A subsurface drip irrigation disposal works reduces the downward percolation of wastewater by enhancing evapotranspiration to the atmosphere.
3. An applicant may use a subsurface drip irrigation disposal works to overcome site constraints, such as high groundwater, shallow soils, slowly permeable soils, or highly permeable soils, or if water conservation is needed.
4. The subsurface drip irrigation disposal works includes pipe, pressurization and dosing components, controls, and appurtenances to reliably deliver treated wastewater to driplines using supply and return manifold lines.

B. Performance. An applicant shall ensure that:
1. Treated wastewater that meets the following criteria is delivered to a subsurface drip irrigation disposal works:
   a. Performance Category A.
      i. TSS of 20 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of one colony forming unit per 100 milliliters, 95th percentile; or
   b. Performance Category B.
      i. TSS of 30 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile; and
2. The subsurface drip irrigation works is designed to meet the following performance criteria:
   a. Prevention of ponding on the land surface, and
   b. Incorporation of a fail-safe wastewater control or operational process to prevent inadequately treated wastewater from being discharged.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B), R18-9-A309(B), and R18-9-E304, the applicant shall submit:
1. Documentation of the pretreatment method proposed to achieve the wastewater criteria specified in subsection (B)(1), such as the type of pretreatment system and the manufacturer's warranty;
2. Initial filter and drip irrigation flushing settings;
3. Site evapotranspiration calculations if used to reduce the size of the disposal works; and

4. If supplemental irrigation water is introduced to the subsurface drip irrigation disposal works, an identification of the cross-connection controls, backflow controls, and supplemental water sources.

D. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:

1. The design requirements of R18-9-E304 are followed, except that:
   a. The requirement for quick disconnects in R18-9-E304(D)(1)(c) is not applicable, and
   b. The applicant may provide the reserve volume specified in R18-9-E304(D)(3)(a)(iv) in an oversized treatment tank or a supplemental storage tank;
2. Drip irrigation components and appurtenances are properly placed.
   a. Performance category A subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed to prevent ponding on the land surface, and
      ii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; or
   b. Performance category B subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed at least 6 inches below the surface of the native soil;
      ii. A cover of soil or engineered fill is placed on the surface of the native soil to achieve a total emitter burial depth of at least 12 inches;
      iii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; and
      iv. The drip irrigation disposal works is not used for irrigating food crops;
3. Wastewater is filtered upstream of the dripline emitters to remove particles 100 microns in size and larger;
4. A pressure regulator is provided to limit the pressure of wastewater in the drip irrigation disposal works;
5. Wastewater pipe meets the approved pressure rating in "Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120, D1785-04a (2004)," or "Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80, F441/F441M-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
6. The system design flushes the subsurface drip irrigation disposal works components with wastewater at a minimum velocity of 2 feet per second, unless the manufacturer's manual and warranty specify another flushing practice. The applicant shall ensure that piping and appurtenances allow the wastewater to be pumped in a line flushing mode of operation with discharge returned to the treatment system headworks;
7. Air vacuum release valves are installed to prevent water and soil drawback into the emitters;
8. Driplines.
   a. Driplines are placed from 12 to 24 inches apart unless other configurations are allowed by the manufacturer's specifications;
   b. Dripline installation and design requirements, including the allowable deflection, follow manufacturer's requirements;
   c. The maximum length of a single dripline follows manufacturer's specifications to provide even distribution;
   d. The dripline incorporates a herbicide to prevent root intrusion for at least 10 years;
   e. The dripline incorporates a bactericide to reduce bacterial slime buildup;
   f. Disinfection does not reduce the life of the bactericide or herbicide in the dripline;
   g. Any return flow from a drip irrigation disposal works to the treatment works does not impair the treatment performance; and
   h. When dripline installation is under subsection (E)(1)(b) or (c), backfill consists of the excavated soil or similar soil obtained from the site that is screened for removal of debris and rock larger than 1/2-inch;
9. Emitters.
   a. Emitters are spaced no more than 2 feet apart, and
   b. Emitters are designed to discharge from 0.5 to 1.5 gallons per hour;
10. A suitable backflow prevention system is installed if supplemental water for irrigation is introduced to the pumping system. The applicant shall not introduce supplemental water to the treatment works;
11. The drip irrigation disposal works is installed in soils classified as:
    a. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure or in soil with a percolation rate from 45 to 120 minutes per inch;
    b. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure or in soil with a percolation rate from 31 to 120 minutes per inch; and
    c. Other soils if an appropriate site-specific SAR is determined;
12. The minimum vertical separation distances are 1/2 of those specified in R18-9-A312(E)(2) if the design evapotranspiration rate during the wettest 30-day period of the year is 50 percent or more of design flow, except that the applicant shall not use a minimum vertical separation distance less than 1 foot;
13. In areas where freezing occurs, the irrigation system is protected as recommended by the manufacturer;
14. If drip irrigation components are used for a disposal works using a shaded trench constructed in native soil, the following requirements are met:
    a. The trench is between 12 and 24 inches wide;
    b. The trench bottom is between 12 and 30 inches below the original grade of native soil and level to within 2 inches per 100 feet of length;
    c. Two driplines are positioned in the bottom of the trench, not more than 4 inches from each sidewall;
    d. The trench with the positioned driplines is filled to a depth of 6 to 10 inches with decomposed granite or C-33 sand or a mixture of both, with mixture com-

position, if applicable, and placement specified on the construction drawing;

e. A minimum of 8 inches of backfill is placed over the decomposed granite or C-33 sand fill to an elevation of 1 to 3 inches above the native soil finished grade;

f. Observation ports are placed at both ends of each shaded trench to confirm the saturated wastewater level during operation; and

g. A separation distance of 24 inches or more is maintained between the nearest sidewall of an adjacent trench; and

15. The soil absorption area used for design of a drip irrigation works is calculated using:

a. For a design that uses the shaded trench method described in subsection (D)(14), the bottom and sidewall area of the shaded trench not more than 4 square feet per linear foot of trench; or

b. For all other designs, the number of emitters times an area for each emitter where the emitter area is a square centered on each emitter with the side dimension equal to the emitter separation distance selected by the designer in accordance with R18-9-E322(D)(9)(a), excluding all areas of overlap of adjacent squares.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A) and R18-9-E304, the applicant shall ensure that:

1. The dripline is installed by:
   a. A plow mechanism that cuts a furrow, dispenses pipe, and covers the dripline in one operation;
   b. A trencher that digs a trench 4 inches wide or less;
   c. Digging the trench with hand tools to minimize trench width and disruption to the native soil; or
   d. Without trenching, removing surface vegetation, scarifying the soil parallel with the contours of the land surface, placing the pipe grid, and covering with fill material, unless prohibited in subsection (D)(2)(b)(ii);
2. Drip irrigation pipe is stored to preserve the herbicidal and bactericidal characteristics of the pipe;
3. Pipe deflection conforms to the manufacturer's requirements and installation is completed without kinking to prevent flow restriction;
4. A shaded trench drip irrigation disposal works is installed as specified in the design documents used for the Construction Authorization; and
5. The pressure piping and electrical equipment are installed according to the Construction Authorization in R18-9-A301(D)(1)(c) and any local building codes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and R18-9-E304, the permittee shall:

1. Test any fail-safe wastewater control or operational process quarterly to ensure proper operation to prevent discharge of inadequately treated wastewater, and
2. Maintain the herbicidal and bacteriological capability of the drip irrigation disposal works.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E323. 4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

A. A 4.23 General Permit allows for the construction and use of an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day or more than one on-site wastewater treatment facility on a property or on adjacent properties under common ownership with a combined design flow from 3000 to less than 24,000 gallons per day if all of the following apply:

1. Except as specified in subsection (A)(3), the treatment and disposal works consists of technologies or designs that would otherwise be covered under other general permits, but are either sized larger to accommodate increased flows or, will be located at a site that cumulatively accommodates flows between 3000 gallons per day to less than 24,000 gallons per day;
2. The on-site wastewater treatment facility complies with all applicable requirements of Articles 1, 2, and 3 of this Chapter;
3. The facility is not a system or a technology that would otherwise be covered by one of the following general permits available for a design flow of less than 3000 gallons per day:
   a. An aerobic system as described in R18-9-E315;
   b. A disinfection device described in R18-9-E320, except that an ultraviolet radiation disinfection device is allowed; or
   c. A seepage pit or pits described in R18-9-E302; and
4. The discharge of total nitrogen to groundwater is controlled.
   a. An applicant shall:
      i. Demonstrate that the nitrogen loading calculated over the property served by the on-site wastewater treatment facility, including streets, common areas, and other non-contributing areas, is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field; or
      ii. Justify a nitrogen loading that is equally protective of aquifer water quality as the nitrogen loading specified in subsection (A)(4)(a)(i) based on site-specific hydrogeological or other factors.
   b. For purposes of the demonstration in subsection (A)(4)(a)(i), the applicant may assume that 0.0333 pounds (15.0 grams) of total nitrogen per day per person is contributed to raw sewage and may determine the nitrogen concentration in the treated wastewater at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. A performance assurance plan consisting of tasks, schedules, and estimated annual costs for operating, maintaining, and monitoring performance over a 20-year operational life;
2. Design documents and the performance assurance plan, signed, dated, and sealed by an Arizona-registered professional engineer;

3. Any documentation submitted under the alternative design procedure in R18-9-A312(G) that pertains to achievement of better performance levels than those specified in the general permit for the corresponding facility with a design flow of less than 3000 gallons per day, or for any other alternative design, construction, or operational change proposed by the applicant; and
4. A demonstration of total nitrogen discharge control specified in subsection (A)(4).

C. Design requirements. The applicant shall comply with the applicable requirements in R18-9-A312 and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

D. Installation requirements. The applicant shall comply with the applicable requirements in R18-9-A313(A) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

E. Operation and maintenance requirements. The applicant shall comply with the applicable requirements in R18-9-A313(B) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

F. Additional Discharge Authorization requirements. In addition to any other requirements, the applicant shall submit the following information before the Discharge Authorization is issued.
1. A signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department affirming that:
   a. The project was completed in compliance with the requirements of this Section and as described in the plans and specifications, or
   b. Any changes are reflected in as-built plans submitted with the Engineer's Certificate of Completion.
2. The name of the service provider or certified operator that is responsible for implementing the performance assurance plan.

G. Reporting requirement. The permittee shall provide the Department with the following information on the anniversary date of the Discharge Authorization:
1. A form signed by the certified operator or service provider that:
   a. Provides any data or documentation required by the performance assurance plan,
   b. Certifies compliance with the requirements of the performance assurance plan, and
   c. Describes any additions to the facility during the year that increased flows and certifies that the flow did not exceed 24,000 gallons per day during any day; and
2. Any applicable fee required by 18 A.A.C. 14.

H. Facility expansion. If an expansion of an on-site wastewater treatment facility or site operating under this Section involves the installation of a separate on-site wastewater treatment facility on the property with a design flow of less than 3000 gallons per day, the applicant shall submit the applicable Notice of Intent to Discharge and fee required under 18 A.A.C. 14 for the separate on-site wastewater treatment facility in order to add the facility to the existing site operating under this Section.
1. The applicant shall indicate in the Notice of Intent to Discharge the Department's file number and the issuance date of the Discharge Authorization previously issued by the Director under this Section for the property.
2. Upon satisfactory review, the Director shall reissue the Discharge Authorization for this Section, with the new issuance date and updated information reflecting the expansion.
3. If the expansion causes the accumulative design flow from on-site wastewater treatment facilities on the property to equal or exceed 24,000 gallons per day, the Director shall not reissue the Discharge Authorization, but shall require the applicant to submit an application for an individual permit addressing all proposed and operating facilities on the property.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

Table 1. Unit Design Flows

Wastewater Source (Add together all wastewater source line items applicable to the facility per applicable unit.)	**Applicable Unit**	**Sewage Design Flowper Applicable Unit, Gallons Per Day**
Airport		
For each passenger (average daily number), add	Passenger (average daily number)	4
For each employee, add	Employee	15
Auto Wash	Facility	Per manufacturer, if consistent with this Chapter
Bar/Lounge	Seat	30
Barber Shop	Chair	35
Beauty Parlor	Chair	100
Bowling Alley (snack bar only)	Lane	75
Camp		
Day camp, no cooking facilities	Camping unit	30
Campground, overnight, flush toilets	Camping unit	75
Campground, overnight, flush toilets and shower	Camping unit	150
Campground, luxury	Person	100-150
Camp, youth, summer, or seasonal	Person	50

Church Without kitchen With kitchen	 Person (maximum attendance) Person (maximum attendance)	 5 7
Country Club	Resident Member Nonresident Member	100 10
Dance Hall	Patron	5
Dental Office	Chair	500
Dog Kennel	Animal, maximum occupancy	15
Dwelling For determining design flow for sewage treatment facilities under R18-9-B202(A)(9)(a) and sewage collection systems under R18-9-E301(D) and R18-9-B301(K), excluding peaking factor.	Person	80
Dwelling For on-site wastewater treatment facilities per R18-9-E302 through R18-9-E323: Apartment Building 1 bedroom 2 bedroom 3 bedroom 4 bedroom Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction) Single Family Dwellings (for both conventional and alternative systems) Other than Single Family Dwelling, the greater flow value based on: Bedroom count 1-2 bedrooms Each bedroom over 2 Fixture count	 Apartment Apartment Apartment Apartment Resident see R18-9-A314(4)(a) Bedroom Bedroom Fixture unit	 200 300 400 500 100 see R18-9-A314(4)(a) 300 150 25
Fire Station	Employee	45
Hospital All flows Kitchen waste only Laundry waste only	 Bed Bed Bed	 250 25 40
Hotel/motel (assuming outsourced linen laundry service) Without kitchen With kitchen	 Bed (2 person) Bed (2 person)	 50 60
Industrial facility Without showers With showers Cafeteria, add	 Employee Employee Employee	 25 35 5
Institutions Resident Nursing home Rest home	 Person Person Person	 75 125 125
Laundry Self service Commercial	 Wash cycle Washing machine	 50 Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use) Picnic, with showers, flush toilets Picnic, with flush toilets only Recreational vehicle, no water or sewer connections Recreational vehicle, with water and sewer connections Mobile home/Trailer	 Parking space Parking space Vehicle space Vehicle space Space	 40 20 75 100 250

Restaurant/Cafeteria For each employee, add With toilet, add Kitchen waste – full plated service, add Kitchen waste – disposable service, add Garbage disposal, add Cocktail lounge, add	 Employee Customer Meal Meal Meal Customer	 20 7 6 2 1 2
Restroom, public	Toilet	200
School Staff and office Elementary, add Middle and High, add with gym & showers, add with cafeteria, add Boarding, total flow	 Person Student Student Student Student Person	 20 15 20 5 3 100
Service Station with toilets	First bay Each additional bay	1000 500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store For each employee, add Public restroom, add	 Employee Square foot of retail space	 20 0.1
Swimming Pool, Public	Person	10
Theater Indoor Drive-in	 Seat Car space	 5 10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

R18-9-401. Definitions

In addition to the definitions established in A.R.S. §§ 49-101 and 49-201 and A.A.C. R18-9-101, the following terms apply to this Article:

1. "Application of nitrogen fertilizer" means any use of a substance containing nitrogen for the commercial production of a crop or plant. The commercial production of a crop or plant includes commercial sod farms and nurseries.
2. "Contact stormwater" means stormwater that comes in contact with animals or animal wastes within a concentrated animal feeding operation.
3. "Crop or plant needs" means the amount of water and nitrogen required to meet the physiological demands of a crop or plant to achieve a defined yield.
4. "Crop or plant uptake" means the amount of water and nitrogen that can be physiologically absorbed by the roots and vegetative parts of a crop or plant following the application of water.
5. "Impoundment" means any structure, other than a tank or a sump, designed and maintained to contain liquids. A structure that stores or impounds only non-contact stormwater is not an impoundment under this Article.
6. "Liner" or "lining system" means any natural, amendment, or synthetic material used to reduce seepage of impounded liquids into a vadose zone or aquifer.
7. "NRCS guidelines" means the United States Department of Agriculture, Natural Resources Conservation Service, National Engineering Handbook, Part 651 Agricultural Waste Management Field Handbook, Chapter 10, 651.1080, Appendix 10D – Geotechnical, Design, and Construction Guideline (November 1997). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the United States Department of Agriculture, Natural Resources Conservation Service at ftp://ftp.wcc.nrcs.usda.gov/downloads/wastemgmt/AWMFH/awmfh-chap10-app10d.pdf.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-401 renumbered from R18-9-201 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-402. Nitrogen Management General Permits: Nitrogen Fertilizers

An owner or operator may apply a nitrogen fertilizer under this general permit without submitting a notice to the Director, if the owner or operator complies with the following best management practices:

1. Limit application of the fertilizer so that it meets projected crop or plant needs;

2. Time application of the fertilizer to coincide to maximum crop or plant uptake;
3. Apply the fertilizer by a method designed to deliver nitrogen to the area of maximum crop or plant uptake;
4. Manage and time application of irrigation water to minimize nitrogen loss by leaching and runoff; and
5. Use tillage practices that maximize water and nitrogen uptake by a crop or plant.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-402 renumbered from R18-9-202 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-403. Nitrogen Management General Permits: Concentrated Animal Feeding Operations

A. An owner or operator may discharge from a concentrated animal feeding operation without submitting a notice to the Director, if the owner or operator complies with the following best management practices:
1. Harvest, stockpile, and dispose of animal manure from a concentrated animal feeding operation to minimize discharge of any nitrogen pollutant by leaching and runoff;
2. Control and dispose of nitrogen-contaminated water resulting from an activity associated with a concentrated animal feeding operation, up to a 25-year, 24-hour storm event equivalent, to minimize the discharge of any nitrogen pollutant;
3. Following the requirements in subsection (B), construct and maintain a lining for an impoundment, used to contain process wastewater or contact stormwater from a concentrated animal feeding operation to minimize the discharge of any nitrogen pollutant; and
4. Close a facility in a manner that will minimize the discharge of any nitrogen pollutant. If a liner was used in an impoundment:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect any synthetic liner for evidence of holes, tears, or defective seams that could have leaked. If evidence of leakage is discovered:
      i. Remove the liner in the area of suspected leakage,
      ii. Sample potentially impacted soil, and
      iii. Properly dispose of impacted soil or restore to background nitrogen levels;
   c. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   d. Remove and dispose of the liner elsewhere if the impoundment is bermed;
   e. Grade the facility to prevent the impoundment of water; and
   f. Notify the Department within 60 days following closure.

B. Lining requirements for concentrated animal feeding operation impoundments.
1. New impoundments. The owner or operator shall:
   a. Follow the NRCS guidelines for any newly constructed impoundment or an impoundment first used after November 12, 2005, and
   b. Use a coefficient of permeability of 1 X 10^{-7} centimeters per second or less as acceptable liner performance. The owner or operator may include up to 1 order of magnitude reduction in permeability from manure sealing in impoundments that hold wastes having manure as a significant component.
2. Impoundments already in use.
   a. The owner or operator shall maintain the existing seal for any impoundment first used before November 12, 2005.
   b. If any of the following conditions exist at a concentrated animal feeding operation, the Director shall send a notice requiring the owner or operator to reassess the performance of the lining system:
      i. The concentrated animal feeding operation is located within a Nitrogen Management Area designated under R18-9-A317; or
      ii. Existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of an Aquifer Water Quality Standard for a nitrogen pollutant at the point of compliance determined under A.R.S. § 49-244, based on the following information:
         (1) Existing contamination of groundwater by nitrogen species;
         (2) Existing and potential impact to groundwater by sources of nitrogen other than the concentrated animal feeding operation;
         (3) Characteristics of the soil surface, vadose zone, and aquifer;
         (4) Depth to groundwater;
         (5) The estimated operational life of the impoundment;
         (6) Location and characteristics of existing and potential drinking water supplies;
         (7) Construction material and design of existing impoundment structure; and
         (8) Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.
   c. The owner or operator shall, within 90 days of the Director's notice, submit either:
      i. A report to the Department demonstrating consistency with NRCS guidelines and the acceptable liner performance criteria established in subsection (B)(1)(b); or
      ii. Plans and a schedule to upgrade the liner for the impoundment to meet the NRCS guidelines and the acceptable liner performance criteria in subsection (B)(1)(b). The Director may provide additional time for the submittal of the plans and a schedule for upgrade, if the owner or operator demonstrates that technical or financial assistance to develop the plans is needed.
   d. Preliminary decision.
      i. Within 90 days from the date of receipt, the Director shall review the report or the plans submitted under subsection (B)(2)(c) and provide to the owner or operator a preliminary decision on the submittal.
      ii. The owner or operator may, within 30 days of the preliminary decision, submit written comments and supporting information to the Director on the preliminary decision.
      iii. The Director shall evaluate any comments on the preliminary decision and supporting infor-

mation and, within 90 days of receipt of the comments and information, make a final decision.

e. Final decision.

i. If the Director determines that the owner or operator has demonstrated that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b), no additional action is necessary.

ii. If the Director approves the plans and schedules under subsection (B)(2)(c)(ii), the owner or operator shall implement the plans within the time-frame specified in the approved schedule.

iii. If the Director determines that the owner or operator failed to demonstrate that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b) or that the schedule to upgrade the lining is not acceptable, the owner or operator shall upgrade the lining system within a time-frame specified by the Director.

iv. The owner or operator may appeal the Director's decision under A.R.S. Title 41, Chapter 6, Article 10.

3. Notification requirement. The owner or operator of any lined impoundment shall either:

a. Notify the Department of the type of liner that was used to line each impoundment by February 19 of each year following either:

i. The first use of an impoundment not used before November 12, 2005; or

ii. Completion of a liner upgrade required under this Section for an impoundment used before November 12, 2005; or

b. Include the information required in subsections (B)(3)(a)(i) and (ii) in the next annual report submitted for the AZPDES Concentrated Animal Feeding Operation General Permit, issued under 18 A.A.C. 9, Article 9, Part C.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-403 renumbered from R18-9-203 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

A. The Director may revoke coverage under a nitrogen management general permit and require the permittee to obtain an individual permit under 18 A.A.C. 9, Article 2, if the Director determines that the permittee failed to comply with the best management practices under R18-9-403.

B. Notification.

1. If coverage under the nitrogen management general permit is revoked under subsection (A), the Director shall notify the permittee by certified mail of the decision according to the notification and hearing procedures in A.R.S. Title 41, Chapter 6, Article 10. The notification shall include:

a. A brief statement of the reason for the decision,

b. The effective revocation date of the general permit coverage, and

c. A statement of whether the discharge shall cease immediately or whether the discharge may continue until the individual permit is issued, and

2. If the Director requires a person to obtain an individual permit, the notification shall include:

a. An individual permit application form, and

b. A deadline between 90 and 180 days after receipt of the notification for filing the application.

C. When the Director issues an individual permit to an owner or operator of a facility covered under a nitrogen management general permit, the coverage under the nitrogen management general permit is superseded by the individual permit allowing the discharge.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

R18-9-501. Surface Water Quality General Grazing Permit

A. A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:

1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;
2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;
3. Implements land treatments to help achieve Surface Water Quality Standards;
4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.

B. The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:

1. The name and address of the person grazing livestock, and
2. The best management practices selected for livestock grazing.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. UNDERGROUND INJECTION CONTROL

R18-9-601. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-602. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section

repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-603. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART A. GENERAL PROVISIONS

R18-9-A601. Definitions

The following terms apply to this Article:

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Administrator" means the Administrator of the United States Environmental Protection Agency (EPA), or an authorized representative.
3. "Application" means the ADEQ prescribed method, such as a form, for applying for a permit, including any additions, revisions or modifications thereof.
4. "Appropriate Act and regulations" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.
5. "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
6. "Area of review" means the area surrounding an injection well described according to the criteria set forth in R18-9-B612 or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in R18-9-B612.
7. "Arizona UIC Memorandum of Agreement" means the agreement between the Administrator and the Director that coordinates EPA and ADEQ activities, responsibilities, and programs under the Arizona UIC Program.
8. "Arizona UIC Program" means the UIC program administered by the Director and approved by EPA according to 42 U.S.C. § 300h-1.
9. "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling to support the sides of the hole and prevent the walls from caving; to prevent loss of drilling mud into porous ground; or to prevent water, gas, or other fluid from entering or leaving the hole.
10. "Catastrophic collapse" means the sudden and utter failure of overlaying strata caused by removal of underlying materials.
11. "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.
12. "Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.
13. "Confining zone" means a geological formation, group of formations, or parts of a formation that is capable of limiting fluid movement above an injection zone.
14. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
15. "Conventional mine" means an open pit or underground excavation for the production of minerals.
16. "Director" means the Director of the Arizona Department of Environmental Quality or the Director's designee.
17. "Disposal well" means a well that is used for the disposal of waste into a subsurface stratum.
18. "Draft permit" means a document prepared under R18-9-C618 indicating the Director's tentative decision to issue, renew, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in R18-9-C631 are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, of a permit is not a draft permit, except as discussed in R18-9-C631(B).
19. "Drilling mud" means a heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.
20. "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.
21. "Effective date of the Arizona UIC Program" means the date that the Arizona UIC Program is approved or established by the Administrator.
22. "Emergency permit" means a UIC permit issued in accordance with R18-9-C625.
23. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.
24. "Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of underground source of drinking water (USDW) but has been exempted according to the procedures in R18-9-A605.
25. "Existing injection well" means an injection well other than a new injection well.
26. "Experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested.
27. "Facility" or "activity" means any UIC injection well subject to regulation under this Article.
28. "Fault" means a surface or zone of rock fracture along which there has been displacement.
29. "Final permit decision" means the Director's decision to issue, renew, modify, revoke and reissue, deny or terminate a permit as described in R18-9-C627.
30. "Flow rate" means the volume per time unit given the flow of gases or other fluid substance which emerges from an orifice, pump, turbine, or passes along a conduit or channel.
31. "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
32. "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
33. "Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.
34. "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in A.A.C. Title 18, Chapter 8 (Hazardous Waste Management).

35. "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
36. "Ground water" means water below the land surface in a zone of saturation.
37. "Hazardous waste" means a hazardous waste as defined in A.R.S. § 49-921.
38. "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.
39. "Indian lands" means Indian country as defined in 18 U.S.C. 1151.
40. "Indian Tribe" means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.
41. "Injection well" means a well into which fluids are being injected.
42. "Injection zone" means a geological formation group of formations, or part of a formation receiving fluids through a well.
43. "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.
44. "Major facility" means any UIC facility or activity classified as such by the Administrator in conjunction with the Director.
45. "New injection wells" means an injection well which began injection after the effective date of the Arizona UIC Program.
46. "Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the Arizona UIC program.
47. "Packer" means a device lowered into a well to produce a fluid-tight seal.
48. "Permit" means an authorization issued by the Director pursuant to this Article. 'Permit' includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. 'Permit' does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a 'draft permit.'"
49. "Person" means an individual, employee, officer, managing body, trust, firm, joint-stock company, consortium, public or private corporation, Partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body, Tribal agency, or other entity.
50. "Plugging" means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.
51. "Plugging record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.
52. "Pressure" means the total load or force per unit area acting on a surface.
53. "Project" means a group of wells in a single operation.
54. "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II column 2.
55. "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 et seq.).
56. "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.
57. "Schedule of compliance" means a schedule of remedial measures included in a permit including an enforceable sequence of interim requirements leading to compliance with this Article.
58. "SDWA" or "Safe Drinking Water Act" means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).
59. "Septic system" means a well that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.
60. "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
61. "Stratum" means a single sedimentary bed or layer, or series of layers that consists of generally the same kind of rock material regardless of thickness. The plural of stratum is strata.
62. "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering fluid pressures; removal of underlying support material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting; oxidation of organic matter in soils; or added load on the land surface.
63. "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
64. "Surface casing" means the first string of well casing to be installed in the well.
65. "Total dissolved solids" or "TDS" means the total dissolved (filterable) solids as determined by use of the method specified in A.A.C. R9-14-610 or R9-14-611.
66. "Transferee" means the owner or operator receiving ownership and/or operational control of the well.
67. "Transferor" means the owner or operator transferring ownership and/or operational control of the well.
68. "Underground injection" means a well injection; which excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

69. "Underground Injection Control" or "UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including the Arizona UIC Program.
70. "USDW," "USDWs," or "Underground source of drinking water" means an aquifer or aquifers or its portion that:
    a. Supplies any public water system; or
    b. Contains a sufficient quantity of ground water to supply a public water system; and
        i. Currently supplies drinking water for human consumption; or
        ii. Contains fewer than 10,000 mg/l total dissolved solids; and
    c. Is not an exempted aquifer.
71. "Well" means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.
72. "Well injection" means the subsurface emplacement of fluids through a well.
73. "Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.
74. "Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.
75. "Well stimulation" means several processes used to clean the well bore, enlarge channels and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation and includes surging, jetting, blasting, acidizing, or hydraulic fracturing.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A602. Applicability

A. This Article becomes effective upon the date of the Environmental Protection Agency's approval of the Arizona UIC Program. Upon that date, the Department shall, under A.R.S. Title 49, Chapter 2, Articles 3.3, 4 and Article 6 of this Chapter, administer and enforce any permit which has been previously authorized or issued in this state under the Federal UIC program.

B. This Article and 40 CFR Part 145, Subpart C provide the minimum requirements of the State of Arizona's Underground Injection Control (UIC) program under A.R.S. Title 49, Chapter 2, Article 3.3 (Underground Injection Control Permit Program) and pursuant to Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93-523, as amended; 42 U.S.C. 300h et seq.).

C. Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:
1. Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq., or
2. Authorized by OGCC pursuant to regulations approved by EPA.

D. Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

E. Injection wells regulated under this Article are categorized into six classes based on characteristics of the injection well activity. Owners or operators of injection wells regulated under all six classes must be authorized by permit (all classes) or rule (Class V only if no permit is required) pursuant to the requirements of this Article.

F. Specific inclusions. The following wells are included among those types of injection activities which are covered by the UIC regulations in this Article. (This list is not intended to be exclusive but is for clarification only.)
1. Any injection well located on a drilling platform inside the State's territorial waters.
2. Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.
3. Any well used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.
4. Any septic tank, cesspool, or other well used by a multiple dwelling, or community, or other large system for the injection of wastes.

G. Specific exclusions. The following are not covered by these regulations:
1. Septic systems or similar waste disposal systems if such systems:
    a. Are used solely for the disposal of sanitary waste, and
    b. Have a design capacity of less than 3,000 gallons per day.
2. Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
3. Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.
4. Injection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.

H. Safe Drinking Water Act exemptions. The following activities are exempt from the Arizona UIC Program:
1. The underground injection of natural gas for purposes of storage.
2. The underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

I. The Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water, to assist in carrying out the Director's duty pursuant to this Article. Any aquifer meeting the criteria under R18-9-A601(70) shall be protected as an USDW, even if it has not been explicitly identified pursuant to this Section.

J. The Director may also designate aquifers or portions of aquifers as exempt from the program using the criteria in R18-9-A605 and R18-9-A606, subject to EPA approval. Any aquifer or portion thereof within the State that has previously been designated exempt by EPA pursuant to 40 CFR § 144.7 shall be part of the Arizona UIC program upon the effective date of the Arizona UIC program.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A603. Confidentiality of Information

A. In accordance with A.R.S. § 49-205, any information submitted to the Director pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in A.R.S. § 49-205 (Availability of information to the public).

B. Claims of confidentiality for the following information will be denied:
1. The name and address of any permit applicant or permittee.
2. Information which deals with the existence, absence, or level of contaminants in drinking water.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A604. Classification of Wells

A. Class I wells are:
1. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
2. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
3. Radioactive waste disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.

B. Class II wells are injection wells that inject fluids:
1. That are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.
2. For enhanced recovery of oil or natural gas.
3. For storage of hydrocarbons which are liquid at standard temperatures and pressure.

C. Class III wells are injection wells used for the extraction of minerals, including:
1. Sulfur mining by the Frasch process.
2. In-situ production of uranium or other metals from those ore bodies not conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.
3. Solution mining of salts or potash.

D. Class IV wells are injection wells that either:
1. Inject hazardous or radioactive wastes into or above a formation with an USDW located within one-quarter mile of the well bore, or
2. Inject hazardous wastes and cannot be classified under subsection (A)(1), or (D)(1) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been previously exempted or exempted pursuant to R18-9-A606).

E. Class V wells are injection wells not included in Class I, II, III, IV, or VI.
1. Class V wells include but are not limited to:
   a. Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump.
   b. Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.
   c. Cooling water return flow wells used to inject water previously used for cooling.
   d. Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation.
   e. Dry wells used for the injection of wastes into a subsurface formation.
   f. Recharge wells used to replenish the water in an aquifer.
   g. Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.
   h. Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, except for radioactive wastes.
   i. Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.
   j. Subsidence control wells, other than those used in oil or natural gas production, that inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with freshwater overdraft.
   k. Injection wells associated with the recovery of geothermal energy for heating, aquaculture, and production of electric power.
   l. Wells used for solution mining of conventional mines such as stopes leaching.
   m. Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts.
   n. Injection wells used in experimental technologies.
   o. Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.
2. Class V wells do not include single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day.

F. Class VI wells are:
1. Not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;
2. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or

3. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 of this Chapter and R18-9-A604.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A605. Identification of Underground Sources of Drinking Water and Exempt Aquifers

A. The Director may identify, by narrative description, illustration, maps, or other means, and shall protect as USDWs, all aquifers and parts of aquifers that meet the definition of USDW in R18-9-A601(70) except to the extent there is an applicable aquifer exemption under subsection (B) or an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration under subsection (D). Other than EPA-approved aquifer exemption expansions that meet the criteria set forth in R18-9-A606(4), new aquifer exemptions shall not be issued for Class VI injection wells. Even if an aquifer has not been specifically identified by the Director, it is an USDW if it meets the definition in R18-9-A601(70).

B. Aquifer exemptions procedure:

1. The Director may identify, by narrative description, illustrations, maps, or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that the Director proposes to designate as exempted aquifers using the criteria in R18-9-A606.
2. No designation of an exempted aquifer submitted as part of Arizona's UIC program shall be final until approved by EPA as part of the Arizona UIC Program. No designation of an expansion to the areal extent of a Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration shall be final until approved by the EPA as a substantial revision of the Arizona UIC Program in accordance with 40 CFR 145.32.
3. Subsequent to the program approval or promulgation, the Director may, after notice and opportunity for public hearing, identify additional exempted aquifers.
4. Exemption of aquifers identified:
   a. Under R18-9-A606(2) shall be treated as a program revision under 40 CFR 145.32;
   b. Under R18-9-A606(3) shall become final if the Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days.

C. Additional aquifer exemption requirements:

1. For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under R18-9-A606(2)(a) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by R18-9-C616(D).
2. For Class II wells, a demonstration of commercial producibility shall be made as follows:
   a. For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.
   b. For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

D. Owners or operators of Class II enhanced oil recovery or enhanced gas recovery wells may request that the Director approve an expansion to the areal extent of an aquifer exemption already in place for a Class II enhanced oil recovery or enhanced gas recovery well for the exclusive purpose of Class VI injection for geologic sequestration. Such requests must be treated as a substantial program revision to the Arizona UIC program under 40 CFR 145.32 and will not be final until approved by EPA.

1. The owner or operator of a Class II enhanced oil recovery or enhanced gas recovery well that requests an expansion of the areal extent of an existing aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration must define, by narrative description, illustrations, maps or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that are requested to be designated as exempted using the criteria in R18-9-A606.
2. In evaluating a request to expand the areal extent of an aquifer exemption of a Class II enhanced oil recovery or enhanced gas recovery well for the purpose of Class VI injection, the Director must determine that the request meets the criteria for exemptions in R18-9-A606. In making the determination, the Director shall consider:
   a. Current and potential future use of the USDWs to be exempted as drinking water resources;
   b. The predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the geologic sequestration project, as informed by computational modeling performed pursuant to R18-9-J659(C)(1), in order to ensure that the proposed injection operation will not at any time endanger USDWs including non-exempted portions of the injection formation;
   c. Whether the areal extent of the expanded aquifer exemption is of sufficient size to account for any possible revisions to the computational model during reevaluation of the area of review, pursuant to R18-9-J659(E); and
   d. Any information submitted to support a waiver request made by the owner or operator under R18-9-J670 if appropriate.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A606. Criteria for Exempted Aquifers
An aquifer or a portion thereof which meets the criteria for an "USDW" in R18-9-A601(70) may be determined under R18-9-A605 to be an "exempted aquifer" for Class I-V wells if it meets the criteria in subsections (A)(1) through (A)(3). Class VI wells must meet the criteria under subsection (A)(4).

1. It does not currently serve as a source of drinking water; and
2. It cannot now and will not in the future serve as a source of drinking water because:
   a. It is mineral hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or Class III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;
   b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technically impractical;
   c. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
   d. It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
3. The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.
4. The areal extent of an aquifer exemption for a Class II enhanced oil recovery or enhanced gas recovery well may be expanded for the exclusive purpose of Class VI injection for geologic sequestration under R18-9-A605(D) if it meets the following criteria:
   a. It does not currently serve as a source of drinking water; and
   b. The total dissolved solids content of the ground water is more than 3,000 mg/l and less than 10,000 mg/l; and
   c. It is not reasonably expected to supply a public water system.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART B. GENERAL PROGRAM REQUIREMENTS

R18-9-B607. Prohibition of Unauthorized Injection
Any underground injection, except into a well authorized by rule or authorized by permit under the Arizona UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B608. Prohibition of Movement of Fluid into Underground Sources of Drinking Water

A. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under this Article, as shown in Table 1, or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this subsection are met.

B. For Class I, II, III, and VI wells, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW, except as authorized under this Article, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with R18-9-C632 or the permit may be terminated under R18-9-C634 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of Class V wells authorized by rule see R18-9-I650 through R18-9-I655 in Part I of this Article.

C. For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under this Article, they shall:

1. Require the injector to obtain an individual permit;
2. Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation; or
3. Take enforcement action.

D. Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, they may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under subsection (C).

E. Notwithstanding any other provision of this Section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or USDW may present an imminent and substantial endangerment to the health of persons.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B609. Prohibition of Hazardous Waste Injection and Class IV Wells

A. Hazardous Waste Injection.

1. The following are prohibited, except as provided in subsection (B)(3):
   a. The construction of any well for the purpose of hazardous waste injection.
   b. The operation of any well for the purpose of hazardous waste injection.
2. The owner or operator of a well for the purpose of hazardous waste injection shall close the well in accordance with this subsection.
3. The owner or operator of a well for the purpose of hazardous waste injection shall comply with the following requirements regarding closure of the well.
   a. Prior to abandoning any well for the purpose of hazardous waste injection, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
   b. The owner or operator of a well for the purpose of hazardous waste injection must notify the Director

of intent to abandon the well at least 30 days prior to abandonment.

B. Class IV.

1. The following are prohibited, except as provided in subsection (B)(3):
   a. The construction of any Class IV well.
   b. The operation or maintenance of any Class IV well.
2. The owner or operator of a Class IV well shall comply with the requirements of R18-9-H649 regarding closure of Class IV wells.
3. Wells used to inject contaminated groundwater that has been treated and is being reinjected into the same formation that it was drawn are not prohibited by this Section if such injection is approved by the Administrator or the Director pursuant to subsections (B)(3)(a), (b) or (c):
   a. Provisions for cleanup of releases under CERCLA, or
   b. The requirements and provisions under RCRA, or
   c. The requirements and provisions under other applicable state laws for corrective and remedial action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B610. Waiver of Requirement by Director

A. When injection does not occur into, through, or above an USDW, the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required under this Article or R18-9-D636 to the extent that reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

B. When injection occurs through or above an USDW, but the radius of endangering influence when computed under R18-9-B612(A) is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required under R18-9-D636 to the extent that a reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

C. When reducing requirements under this Section, the Director shall prepare a fact sheet under R18-9-C619 explaining the reasons for the action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B611. Records

The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with this Article and Part C of the SDWA or its implementing regulations.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B612. Area of Review

A. The area of review for each injection well or each field, project or area of the State shall be determined according to this Section. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field.

B. Where the area of review is determined according to the zone of endangering influence:

1. The zone of endangering influence shall be:
   a. In the case of application or applications for well permit or permits under R18-9-C616 that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW; or
   b. In the case of an application for an area permit under R18-9-C624, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW.
2. Computation of the zone of endangering influence may be based upon the parameters listed in the following equation and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take.
   a.

$$r = \left(\frac{2.25KHt}{S10^{X}}\right)^{1/2}$$

where:

$$X = \frac{4\pi KH\left(h_w - h_{bo} \times S_p G_b\right)}{2.3Q}$$

r = Radius of endangering influence from injection well (length)
K = Hydraulic conductivity of the injection zone (length/time)
H = Thickness of the injection zone (length)
t = Time of injection (time)
S = Storage coefficient (dimensionless)
Q = Injection rate (volume/time)
h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost USDW
h_w = Hydrostatic head of USDW (length) measured from the base of the lowest USDW
$S_p G_b$ = Specific gravity of fluid in the injection zone (dimensionless)
π = 3.142 (dimensionless)

   b. The equation in subsection (B)(2)(a) is based on the following assumptions:
      1. The injection zone is homogeneous and isotropic;
      2. The injection zone has infinite area extent;
      3. The injection well penetrates the entire thickness of the injection zone;
      4. The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and
      5. The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

C. Where Fixed Radius is used, the following shall apply:

1. In the case of application of applications for well permit or permits under R18-9-C616 a fixed radius around the well of not less than one-quarter mile may be used.
2. In the case of an application for an area permit under R18-9-C624, a fixed radius width of not less than one-quarter mile for circumscribing area may be used.
3. In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area.

D. If the area of review is determined by a mathematical model according to subsection (B), the permissible radius is the result of such calculation even if it is less than one-fourth mile.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B613. Mechanical Integrity

A. An injection well has mechanical integrity if:
1. There is no significant leak in the casing, tubing or packer; and
2. There is no significant fluid movement into an USDW through vertical channels adjacent to the injection well bore.

B. One of the following methods must be used to evaluate the absence of significant leaks under subsection (A)(1):
1. Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;
2. Pressure test with liquid or gas; or
3. Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:
   a. Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or
   b. Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

C. One of the following methods must be used to determine the absence of significant fluid movement under subsection (A)(2):
1. The results of a temperature or noise log;
2. For Class II only, cementing records demonstrating the presence of adequate cement to prevent such migration;
3. For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at subsection (C)(1), cementing records demonstrating the presence of adequate cement to prevent such migration; or
4. For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by R18-9-G647(B) shall be designed to verify the absence of significant fluid movement.

D. The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in subsections (B) and (C)(2) with the written approval of the Administrator.

E. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test or tests and the method or methods used. In making the evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.

F. The Director may require additional or alternative tests if the results presented by the owner or operator under subsection (E) are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B614. Plugging and Abandoning Class I, II, III, IV, and V Wells

A. Requirements for Class I, II and III wells.
1. Prior to abandoning Class I, II and III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between USDWs. The Director may allow Class III wells to use other plugging materials if the Director is satisfied that such materials will prevent movement of fluids into or between USDWs.
2. Placement of the cement plugs shall be accomplished by one of the following:
   a. The Balance method;
   b. The Dump Bailer method;
   c. The Two-Plug method; or
   d. An alternative method approved by the Director, which will reliably provide a comparable level of protection to USDWs.
3. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug or plugs.
4. The plugging and abandonment plan required under R18-9-D635(15) and R18-9-D636(A)(5) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under R18-9-A606, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where it is deemed necessary and feasible to insure adequate protection of USDWs.

B. Requirements for Class IV wells. Prior to abandoning a Class IV well, the owner or operator shall close the well in accordance with R18-9-H649.

C. Requirements for Class V wells.

1. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause a violation of any primary drinking water regulation under Table 1 of this Article or may otherwise adversely affect the health of persons.
2. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B615. Transitioning from Class II to Class VI Injection Well

A. Owners and operators that are injecting carbon dioxide for the primary purpose of long-term storage into an oil and gas reservoir must apply for and obtain a Class VI geologic sequestration permit when there is an increased risk to the USDWs compared to Class II operations. In determining if there is an increased risk to USDWs, the owner or operator must consider the factors specified in subsection (B).

B. The Director shall determine when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In order to make this determination the Director shall consider the following:
1. Increase in reservoir pressure within the injection zone or zones;
2. Increase in carbon dioxide injection rates;
3. Decrease in reservoir production rates;
4. Distance between the injection zone or zones and USDWs;
5. Suitability of the Class II area of review delineation;
6. Quality of abandoned well plugs within the area of review;
7. The owner's or operator's plan for recovery of carbon dioxide at the cessation of injection;
8. The source and properties of injected carbon dioxide; and
9. Any additional site-specific factors as determined by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C616. Individual Permits; Application for Individual Permits

A. Unless an underground injection well is authorized by rule under R18-9-I650, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. Authorization by rule for a well or project that has submitted a permit application terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance, and administration of emergency permits are found exclusively under R18-9-C625.

B. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the Arizona UIC program as follows:
1. For existing wells, as expeditiously as practicable.
2. For new injection wells, except new wells authorized by an existing area permit under R18-9-C624(C), at a reasonable time before construction is expected to begin.

D. All applicants for Class I, II, III, and V permits shall provide the following information to the Director, using the application form provided by the Director. Applicants for Class VI permits shall follow the criteria provided in R18-9-J657.
1. Activities conducted by the applicant which require a permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four NAICS codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity;
5. A listing of all state and federal environmental permits or construction approvals received or applied for and other relevant environmental permits;
6. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary;
7. A brief description of the nature of the business;
8. A plugging and abandonment plan that meets the requirements of R18-9-B614 and is acceptable to the Director;
9. A listing of any historic property or potential historic property as defined by R12-8-301.

E. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this Section for a period of at least three years from the date the application is signed.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C617. Signatories

A. All permit applications, except those submitted for Class II wells, shall be signed as follows:
1. For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:
   a. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
   b. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million, if authority to sign docu-

ments has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a Partnership or sole proprietorship: by a general Partner or the proprietor, respectively; or
3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this Section, a principal executive officer of a Federal agency includes:
   a. The chief executive officer of the agency; or
   b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under R18-9-C616 shall be signed by a person described in subsection (A), or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described in subsection (A);
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and
3. The written authorization is submitted to the Director.

C. If an authorization under subsection (B) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (B) must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

D. Any person signing a document under subsection (A) or (B) shall make the following certification: *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, 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 fine and imprisonment for knowing violations.*

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C618. Draft Permits

A. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the Director tentatively decides to deny the permit application, they shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this Section. If the Director's final decision is that the tentative decision to deny the permit application was incorrect, they shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (D).

C. If the Director decides to prepare a draft permit, it shall contain the following information, to the extent applicable:
1. All conditions under R18-9-D635;
2. All compliance schedules under R18-9-D637;
3. All monitoring requirements under R18-9-D638; and
4. Permit conditions under R18-9-D636.

D. All draft permits prepared under this Section shall be accompanied by a brief summary of the basis for the draft permit conditions or the intent to deny, including references to applicable statutory or regulatory provisions and a fact sheet pursuant to R18-9-C619. The Director shall provide the applicant with the draft permit and the fact sheet and allow reasonable time for informal comment by the applicant prior to publicly noticing the draft permit and fact sheet. The Director shall give notice of opportunity for a public hearing and public comment, issue a final permit decision, and respond to comments.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C619. Fact Sheet

A. A fact sheet shall be prepared for every draft permit for a UIC facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Director shall send the fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:
1. A brief description of the type of facility or activity that is the subject of the draft permit.
2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being injected.
3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.
4. Reasons why any requested variance or alternatives to required standards do or do not appear justified.
5. A description of the procedures for reaching a final decision on the draft permit, including:
   a. The beginning and ending dates of the comment period under R18-9-C620 and the address where comments will be received;
   b. Procedures for requesting a hearing and the nature of that hearing; and
   c. Any other procedures by which the public may Participate in the final decision.
6. The name and telephone number of a person to contact for additional information.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C620. Public Notice of Permit Actions and Public Comment Period

A. The Director shall give public notice that the following actions have occurred:
1. A draft permit that has been prepared under R18-9-C618, and
2. A hearing has been scheduled under R18-9-C622.

B. Public notices may describe more than one permit or permit action.

C. Public notice of the preparation of a draft permit required under subsection (A):

1. Shall allow at least 30 days for public comment; and
2. Shall be given at least 30 days before the hearing date.

D. Public notice of activities described in subsection (A) shall be given by the following methods:
1. Delivery of a copy of the notice to:
   a. The applicant;
   b. Any affected federal, state, tribal, or local agency, or council of government;
   c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
   d. Any person who requested, in writing, notification of the activity;
   e. Any persons on a contact list developed from past permit proceedings and public outreach; and
   f. For Class VI injection well UIC permits, mailing or e-mailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State.
2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).

E. All public notices issued under this Part shall contain the following information:
1. Name and address of the Department;
2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, fact sheet, and the application;
5. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures that the public may use to participate in the final permit decision; and
6. Any additional information considered necessary to the permit decision.

F. In addition to the general public notice described in subsection (E), the public notice of hearing under R18-9-C622 shall contain the following information:
1. Reference to the date of previous public notices relating to the permit;
2. Date, time, and place of the hearing; and
3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

G. In addition to the general public notice described in subsection (E), the Director shall deliver a copy of the fact sheet, permit application, and draft permit to all persons identified in subsections (D)(1)(a), (b), and (c).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C621. Public Comments and Requests for Public Hearings

During the public comment period provided under R18-9-C620, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in R18-9-C623.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C622. Public Hearings

A. The Director shall hold a public hearing whenever they find, on the basis of a request, a significant degree of public interest in a draft permit or permits.

B. The Director may also hold a public hearing at their discretion such as when a hearing might clarify one or more issues involved in the permit decision. The Director may designate a presiding officer if a hearing is held.

C. Public notice of the hearing shall be given as specified in R18-9-C620.

D. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R18-9-C620 shall automatically be extended to the close of any public hearing under this Section. The hearing officer may also extend the comment period by so stating at the hearing.

E. An audio recording or written transcript of the hearing shall be made available to the public upon request.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C623. Response to Comments

A. At the time that any final permit is issued under R18-9-C627, the Director shall issue a response to comments. This response shall:
1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments shall be available to the public.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C624. Area Permits

A. The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:
1. Described and identified by location in permit application or applications if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;
2. Within the same well field, facility site, reservoir, project, or similar unit located in Arizona;
3. Operated by a single owner or operator;
4. Used to inject fluids other than hazardous waste; and
5. Other than Class VI wells.

B. Area permits shall specify:

1. The area within which underground injections are authorized; and
2. The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:
1. The permittee notifies the Director at such time as the permit requires;
2. The additional well satisfies the criteria in subsection (A) and meets the requirements specified in the permit under subsection (B); and
3. The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

D. If the Director determines any well that is constructed pursuant to subsection (C) does not satisfy any of the requirements of subsections (C)(1) and (2) the Director may modify the permit under R18-9-C632, terminate under R18-9-C634, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under R18-9-C632.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C625. Emergency Permits

A. Notwithstanding any other provision of this Article, the Director may temporarily permit a specific underground injection if:
1. An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or
2. A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and
   a. Timely application for a permit could not practicably have been made; and
   b. The injection will not result in the movement of fluids into USDWs; or
3. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an USDW.

B. Requirements for issuance.
1. Any temporary permit under subsection (A)(1) shall be for no longer term than required to prevent the hazard.
2. Any temporary permit under subsection (A)(2) shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application.
3. Any temporary permit under subsection (A)(3) shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.
4. Notice of any temporary permit under this Section shall be published in accordance with R18-9-C621 within 10 days of the issuance of the permit.
5. The temporary permit under this Section may be either oral or written. If oral, it must be followed within five calendar days by a written temporary emergency permit.
6. The Director shall condition the temporary permit in any manner they determine is necessary to ensure that the injection will not result in the movement of fluids into an USDW.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C626. Effect of a Permit

A. Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with this Article and Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R18-9-C632 and R18-9-C634.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C627. Final Permit Decision and Notification

A. Issuance of a final permit decision by the Director shall be accompanied by the permit and an updated fact sheet per R18-9-C619, if applicable, and a notification to the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice and hearing procedures are subject to either A.R.S. Title 41, Chapter 6, Article 10, or A.R.S. Title 49, Chapter 2, Article 7.

B. The notice shall include:
1. If applicable, the reasons for the denial, revocation or termination, including reference to the statutes or rules on which the decision is based.
2. A description of the party's right to request a hearing and a reference to the procedures for appealing the final permit decision, including the number of days within which an appeal may be filed and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
3. A reference to the applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06.

C. If the final permit decision is based on a determination by the Director that the applicable criteria under R18-9-A606 are not satisfied, then that determination may be included as part of the appeal.

D. The final permit decision shall take effect 30 days after its issuance in accordance with the notification requirements of subsection A unless stayed pursuant to A.R.S. Title 41, Chapter 6, Article 10, or A.R.S. Title 49, Chapter 2, Article 7.

E. If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates a new aquifer exemption or enlargement of a previously approved aquifer exemption, then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective unless the new aquifer exemption or enlargement of

the previously approved aquifer exemption has been approved by the Administrator.

F. If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates an injection depth waiver pursuant to R18-9-J670 of this Article then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective until the Director is in receipt of written concurrence from the Administrator.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C628. Permit Duration

A. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. UIC permits for Class VI wells shall be issued for the operating life of the facility and the post-injection site care period. The Director shall review each issued Class II, III, and VI well UIC permit at least once every five years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in R18-9-C632.

B. Except as provided in R18-9-C629, the term of a permit shall not be extended by modification beyond the maximum duration specified in this Section.

C. The Director may issue any permit for a duration that is less than the full allowable term under this Section.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C629. Continuation of Expiring Permits

A. The conditions of an expiring permit continue in force under A.R.S. § 41-1092.11(A) until the effective date of a new permit if:

1. The permittee has submitted a timely application that is a complete application for a new permit; and
2. The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the prior permit.

B. Permits continued under this Section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permits the Director may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit that has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit under this Article with appropriate conditions; or
4. Take other action as authorized under this Article.

D. Upon the effective date of EPA's approval of Arizona's UIC program, the Department shall administer any permit authorized or issued under the EPA UIC program in the state of Arizona, excluding Indian lands. The Director may continue expired or expiring EPA-issued UIC permits until the effective date of a new state-issued UIC permit.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C630. Permit Transfer

A. Except as provided in subsection (B), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R18-9-C632(F)(2), or a minor modification made under R18-9-C633(4), to identify the new permittee and incorporate such other requirements as may be necessary under this Article the Safe Drinking Water Act.

B. As an alternative to transfers under subsection (A), any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geological sequestration may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in subsection (B)(2);
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of R18-9-D636(A)(6) will be met by the new permittee; and
3. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify or revoke and reissue the permit. A modification under this Section may also be a minor modification under R18-9-C633. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection (B)(2).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C631. Modification; Revocation and Reissuance; or Termination of Permits

A. Permits may only be modified or revoked and reissued pursuant to R18-9-C632 or terminated pursuant to R18-9-C634 either at the request of any interested person, including the permittee, or upon the Director's initiative. All requests shall be made in writing and shall contain facts or reasons supporting the request.

B. If the Director decides a request to modify, revoke and reissue, or terminate is not justified, they shall send the requestor a brief written response giving a reason for the decision. Denial of a request to terminate does not require a notice of intent to deny. Denial of a request for modification or revocation and reissuance requires a notice of intent to deny only when the request is made by the permittee, the scope of the request has not previously been requested and denied and the request is not for a minor modification. A notice of intent to deny is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.

C. If the Director preliminarily decides to modify or revoke and reissue a permit under R18-9-C632, they shall prepare a draft permit under R18-9-C618 incorporating the proposed changes and notify the permittee in writing of the reason for the preliminary decision to modify or revoke and reissue a permit with reference to the statute or rule on which the decision is based. The Director may request additional information and, in the case of a modified permit, may require the submission of an

updated application. The Director shall require the submission of a new application in the case of revoked and reissued permits.

D. In a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any modification or revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

E. Minor modifications pursuant to R18-9-C633 are not subject to the requirements of this Section.

F. If the Director preliminarily decides to terminate under R18-9-C634(A)(1), (2) or (3), the Director shall issue a notice of intent to terminate that identifies the reason for the preliminary decision to terminate with reference to the statute or rule on which the decision is based. A notice of intent to terminate is not required when a permittee requests termination under R18-9-C634(A)(4). A notice of intent to terminate is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C632. Modification; Revocation and Reissuance of Permits

A. When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under R18-9-C631, or conducts a review of the permit file) they may determine whether or not one or more of the causes listed in subsections (E) and (F) for modification or revocation and reissuance or both exist.

B. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (G), and may request an updated application if necessary.

C. If cause does not exist under this Section or R18-9-C633, the Director shall not modify or revoke and reissue the permit.

D. If a permit modification satisfies the criteria in R18-9-C633 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures under this Article must be followed.

E. For Class II, Class III or Class VI wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees:

1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
2. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance. For UIC area permits under R18-9-C624, this cause shall include any information indicating that cumulative effects on the environment are unacceptable.
3. The standards or regulations on which the permit was based have been changed by promulgation of new regulations or by judicial decision after the permit was issued. Permits other than those for Class II, Class III or Class VI wells may be modified during their permit terms for this cause only as follows:
   a. For promulgation of amended standards or regulations, when:
      i. The permit condition requested to be modified was based on a regulation promulgated under this Article;
      ii. ADEQ has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and
      iii. A permittee requests modification in accordance with R18-9-C631 within 90 days after *Arizona Administrative Register* notice of the ADEQ action on which the request is based.
   b. For judicial decisions, a court of competent jurisdiction has remanded and stayed ADEQ promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with R18-9-C631 within 90 days of judicial remand.
4. The Director determines if good cause exists for modification of a compliance schedule. Good cause includes unforeseen circumstances, like a strike, a flood, a materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also R18-9-C633 (minor modifications).
5. Additionally, for Class VI wells, whenever the Director determines that permit changes are necessary based on:
   a. Area of review reevaluations under R18-9-J659(E)(1);
   b. Any amendments to the testing and monitoring plan under R18-9-J665(10);
   c. Any amendments to the injection well plugging plan under R18-9-J667(C);
   d. Any amendments to the post-injection site care and site closure plan under R18-9-J668(A)(3);
   e. Any amendments to the emergency and remedial response plan under R18-9-J669(D); or
   f. A review of monitoring and/or testing results conducted in accordance with permit requirements.

F. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under R18-9-C634, and the Director determines that modification or revocation and reissuance is appropriate.
2. The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer under R18-9-C630(B) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.
3. A determination that the waste being injected is a hazardous waste as defined in A.R.S. § 49-921 either because the definition has been revised, or because a previous determination has been changed.

G. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C633. Minor Modifications of Permits

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of this Article. Any permit modification not processed as a minor modification under this Section must be made for cause and with a draft permit and public notice as required by R18-9-C632. Minor modifications may only:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
5. Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
6. Change construction requirements approved by the Director pursuant to R18-9-D636(A)(1), provided that any such alteration shall comply with the requirements of this Article;
7. Amend a plugging and abandonment plan that has been updated under R18-9-D636(A)(5); or
8. Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C634. Termination of Permits

A. The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:

1. Noncompliance by the permittee with any condition of the permit;
2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
4. The permittee has requested termination of their permit due to the completion of the terms and conditions therein, including proper abandonment or plugging pursuant to R18-9-B614.

B. The Director shall follow the applicable procedures as required under R18-9-C631(F) in terminating any permit under this Section.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. Conditions Applicable to All Permits

The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits issued under this Article, either expressly or referenced by specific citation. If incorporated by reference, a specific citation to this Section must be given in the permit.

1. The permittee must comply with all conditions of any permit issued under this Article. Any permit noncompliance constitutes a violation of this Article and is grounds for enforcement action; for permit modification, revocation and reissuance, or termination; or for denial of a permit renewal application unless otherwise authorized in an emergency permit under R18-9-C625.
2. If the permittee wishes to continue any activity regulated by permit under this Article after the expiration date of this permit, the permittee must apply for and obtain a new permit.
3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
4. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
5. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
6. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
7. This permit does not convey property rights of any sort, or any exclusive privilege.
8. The permittee shall furnish to the Director, within a time specified, any information which the Director may

request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
   a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
   b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
   c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
   d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article the SDWA, any substances or parameters at any location.
10. Monitoring and records.
   a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
   b. The permittee shall retain records of all monitoring information, including the following:
      i. Calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and
      ii. The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under R18-9-D636(A)(5), or under this Article as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
   c. Records of monitoring information shall include:
      i. The date, exact place, and time of sampling or measurements;
      ii. The individual or individuals who performed the sampling or measurements;
      iii. The date or dates analyses were performed;
      iv. The individual or individuals who performed the analyses;
      v. The analytical techniques or methods used; and
      vi. The results of such analyses.
   d. Owners or operators of Class VI wells shall retain records as specified in Part J of this Article, including R18-9-J659(G), R18-9-J666(6), R18-9-J667(D), R18-9-J668(F), and R18-9-J668(H).
11. All applications, reports, or information submitted to the Director shall be signed and certified as required under R18-9-C617.
12. Reporting requirements.
   a. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.
   b. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
   c. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under this Article.
   d. Monitoring results shall be reported at the intervals specified in this permit.
   e. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.
   f. The permittee shall report any noncompliance that may endanger health or the environment within 24 hours, including:
      i. Any monitoring or other information that indicates any contaminant may cause an endangerment to a USDW; or
      ii. Any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
   g. The permittee shall report all instances of noncompliance not reported under subsections (A)(12)(a), (d), (e), and (f), at the time monitoring reports are submitted. The reports shall contain the information listed in subsection (A)(12)(f).
   h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
13. Except for all new wells authorized by an area permit under R18-9-C624(C), a new injection well may not commence injection until construction is complete; and:
   a. The permittee has submitted notice of completion of construction to the Director; and
   b. Either of the following apply:
      i. The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or
      ii. The permittee has not received notice from the Director of the intent to inspect or otherwise

review the new injection well within 13 days of the date of the notice under subsection (A)(13)(a), in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in the notice a reasonable time period in which the well shall be inspected.

14. The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.
15. A Class I, II, or III permit shall include, and a Class V permit may include, conditions that meet the requirements of R18-9-B614 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of R18-9-B614, the Director shall incorporate the plan into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this subsection, or deny the permit. A Class VI permit shall include conditions that meet the requirements set forth in R18-9-J667. Where the plan meets the requirements of R18-9-J667, the Director shall incorporate it into the permit as a permit condition. For purposes of this subsection, temporary or intermittent cessation of injection operations is not abandonment.
16. Within 60 days after plugging a well or at the time of the next quarterly report, whichever is less, the owner or operator shall submit a report to the Director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:
    a. A statement that the well was plugged in accordance with the plan previously submitted to the Director; or
    b. Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Director, specifying the differences.
17. Duty to establish and maintain mechanical integrity.
    a. The owner or operator of a Class I, II, III or VI well permitted under this Article shall establish mechanical integrity prior to commencing injection or on a schedule determined by the Director. Thereafter the owner or operator of Class I, II, and III wells must maintain mechanical integrity as defined in R18-9-B613 and the owner or operator of Class VI wells must maintain mechanical integrity as defined in R18-9-J664.
    b. When the Director determines that a Class I, II, III or VI well lacks mechanical integrity pursuant to R18-9-B613 or R18-9-J664 for Class VI, written notice of the determination will be given to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of R18-9-B614 or require the permittee to perform such additional construction, operation, monitoring, reporting, and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to R18-9-B613.
    c. The Director may allow the owner or operator of a well that lacks mechanical integrity pursuant to R18-9-B613(A)(1) to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D636. Establishing Permit Conditions

A. In addition to conditions required in R18-9-D635, the Director shall establish conditions, as required on a case-by-case basis under R18-9-C628 (Permit Duration), R18-9-D637 (Schedules of Compliance), and R18-9-D638 (Requirements for Recording and Reporting Monitoring Results). Permits for owners or operators of Class VI injection wells shall include conditions meeting the requirements of Part J of this Article. Permits for other wells shall contain the following requirements, when applicable.

1. Construction requirements as set forth in this Article. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements. New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications as defined under R18-9-C633. No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.
2. Corrective action as set forth in R18-9-D639 and R18-9-J659.
3. Operation requirements as set forth in this Article; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any USDW, that formation fluids are not displaced into any USDW, and to assure compliance with the operating requirements under this Article.
4. Monitoring and reporting requirements as set forth in this Article. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. Monitoring of the nature of injected fluids shall comply with an analytical method prescribed in A.A.C. R9-14-610, or an alternative analytical method approved under A.A.C. R9-14-610(C), or as approved by the Director. A test result from a sample taken to determine compliance with a national primary drinking water 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.

5. After a cessation of operations for two years the owner or operator shall plug and abandon the well in accordance with the plan unless they:
   a. Provide notice to the Director; and
   b. Describe actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.
6. Financial responsibility.
   a. The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until:
      i. The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to R18-9-D635(15), R18-9-B614, and R18-9-J667, and submitted a plugging and abandonment report pursuant to R18-9-D635(16); or
      ii. The well has been converted in compliance with the requirements of R18-9-D635(14); or
      iii. The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.
   b. The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. For Class VI wells, the permittee shall show evidence of such financial responsibility to the Director by the submission of a qualifying instrument, such as a financial statement or other materials acceptable to the Director. The owner or operator of a Class VI well must comply with the financial responsibility requirements set forth in R18-9-J660.
7. A permit for any Class I, II, III or VI well or injection project that lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under R18-9-B613 or R18-9-J664 for Class VI, that the well has mechanical integrity.
8. The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into USDWs.

B. In addition to conditions required in all permits, the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this Article. Applicable requirements include, but are not limited to:
1. State statutory or regulatory requirements in effect prior to final administrative disposition of a permit; or
2. Any requirement in effect prior to the modification or revocation and reissuance of a permit, to the extent allowed under R18-9-C632.

C. New or reissued permits, and to the extent allowed under R18-9-C632 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this Section.

D. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

E. Permits shall provide language on duration, expiration and termination.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D637. Compliance Schedule

A. A permit may, when appropriate, specify a schedule for compliance with this Article.
1. Any compliance schedules shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.
2. Except as provided in subsection (B)(1)(b), if a permit establishes a compliance schedule that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
   a. The time between interim dates shall not exceed one year.
   b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
3. The permit shall be written to require that if subsection (A)(1) is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

B. A permit applicant or permittee may cease conducting regulated activities at a given time by plugging and abandonment rather than continue to operate and meet permit requirements as follows:
1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
   a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
   b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with the applicable requirements.
3. If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:
   a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with

applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements;

c. The second schedule shall lead to cessation of the regulated activities by a date that ensures timely compliance with applicable requirements; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subsection (B)(3)(a) it shall follow the schedule leading to compliance if the decision is to continue conducting the regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of Directors of a corporation.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D638. Requirements for Recording and Reporting Monitoring Results

All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including when appropriate, continuous monitoring; and
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified under this Article. Reporting shall be no less frequent than specified in the above rules.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D639. Corrective Action

A. Applicants for Class I, II, or III injection well permits shall identify the location of all known wells within the injection well's area of review that penetrates the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells that are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under subsection (B) through (E), or deny the application. The Director may disregard the provisions of R18-9-B612 and this Section when reviewing an application to permit an existing Class II well.

B. Any permit issued for an existing injection well, other than Class II wells, requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under subsection (A) to be completed as soon as possible.

C. No owner or operator of a new injection well may begin injection until all required corrective action has been taken.

D. The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

E. When setting corrective action requirements for Class III wells, the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface or surfaces and flow direction or directions rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in R18-9-G647(B) shall be designed to verify the validity of such determinations.

F. In determining the adequacy of corrective action proposed by the applicant under this Section and in determining the additional steps needed to prevent fluid movement into USDWs, the following criteria and factors shall be considered by the Director:

1. Nature and volume of injected fluid;
2. Nature of native fluids or by-products of injection;
3. Potentially affected population;
4. Geology;
5. Hydrology;
6. History of the injection operation;
7. Completion and plugging records;
8. Abandonment procedures in effect at the time the well was abandoned; and
9. Hydraulic connections with USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART E. CLASS I INJECTION WELL REQUIREMENTS

R18-9-E640. Class I; Construction Requirements

A. All Class I wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one-quarter mile of the well bore, an USDW.

B. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

1. Depth to the injection zone;
2. Injection pressure, external pressure, internal pressure, and axial loading;
3. Hole size;
4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint Specification, and construction material;

5. Corrosiveness of injected fluid, formation fluids, and temperatures;
6. Lithology of injection and confining intervals; and
7. Type or grade of cement.

C. All Class I injection wells, except those municipal wells injecting non-corrosive wastes, shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.
1. The use of other alternatives to a packer may be allowed with the written approval of the Director. To obtain approval, the operator shall submit a written request to the Director, which shall set forth the proposed alternative and all technical data supporting its use. The Director shall approve the request if the alternative method will reliably provide a comparable level of protection to USDWs. The Director may approve an alternative method solely for an individual well or for general use.
2. In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:
   a. Depth of setting;
   b. Characteristics of injection fluid such as chemical content, corrosiveness, and density;
   c. Injection pressure;
   d. Annular pressure;
   e. Rate, temperature and volume of injected fluid; and
   f. Size of casing.

D. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:
1. Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.
2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:
   a. For surface casing intended to protect USDWs:
      i. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
      ii. A cement bond, temperature, or density log after the casing is set and cemented.
   b. For intermediate and long strings of casing intended to facilitate injection:
      i. Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;
      ii. Fracture finder logs; and
      iii. A cement bond, temperature, or density log after the casing is set and cemented.

E. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:
1. Fluid pressure;
2. Temperature;
3. Fracture pressure;
4. Other physical and chemical characteristics of the injection matrix; and
5. Physical and chemical characteristics of the formation fluids.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-E641. Class I; Operating, Monitoring, and Reporting Requirements

A. Operating requirements shall, at a minimum, specify that:
1. Except during stimulation injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.
3. Unless an alternative to a packer has been approved under R18-9-E640(C), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a pressure, also approved by the Director, shall be maintained on the annulus.

B. Monitoring requirements shall, at a minimum, include:
1. The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;
2. Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;
3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well; and
4. The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDWs, the parameters to be measured and the frequency of monitoring.

C. Reporting requirements shall, at a minimum, include:
1. Quarterly reports to the Director on:
   a. The physical, chemical and other relevant characteristics of injection fluids;
   b. Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and
   c. The results of monitoring prescribed under subsection (B)(4).
2. Reporting the results, with the first quarterly report after the completion, of:
   a. Periodic tests of mechanical integrity;
   b. Any other test of the injection well conducted by the permittee if required by the Director; and
   c. Any well work over.

D. Ambient monitoring.
1. Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the

Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

2. When prescribing a monitoring system the Director may also require:
   a. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;
   b. The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;
   c. Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;
   d. Periodic monitoring of the ground water quality in the lowermost USDW; and
   e. Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-E642. Class I; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class I wells.
   1. For an existing or converted new Class I well the Director may rely on the existing permit file for those items of information listed in subsections (B), (C) and (D) which are current and accurate in the file.
   2. For a newly drilled Class I well, the Director shall require the submission of all the information listed in subsections (B), (C) and (D) which are current and accurate in the file.
   3. For both existing and new Class I wells certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well the Director shall consider the following:
   1. Information required in R18-9-C616;
   2. A map showing the injection well or wells for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
   3. A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
   4. Maps and cross sections indicating the general vertical and lateral limits of all USDWs within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each USDW which may be affected by the proposed injection;
   5. Maps and cross sections detailing the geologic structure of the local area;
   6. Generalized maps and cross sections illustrating the regional geologic setting;
   7. Proposed operating data:
      a. Average and maximum daily rate and volume of the fluid to be injected;
      b. Average and maximum injection pressure; and
      c. Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;
   8. Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;
   9. Proposed stimulation program;
   10. Proposed injection procedure;
   11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
   12. Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;
   13. Plans, including maps, for meeting the monitoring requirements in R18-9-E641(B);
   14. For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under R18-9-D639;
   15. Construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and
   16. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. Prior to granting approval for the operation of a Class I well the Director shall consider the following information:
   1. All available logging and testing program data on the well;
   2. A demonstration of mechanical integrity pursuant to R18-9-B613;
   3. The anticipated maximum pressure and flow rate at which the permittee will operate;
   4. The results of the formation testing program;
   5. The actual injection procedure;
   6. The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and
   7. The status of corrective action on defective wells in the area of review.

D. Prior to granting approval for the plugging and abandonment of a Class I well the Director shall consider the following information:
   1. The type and number of plugs to be used;
   2. The placement of each plug including the elevation of the top and bottom;
   3. The type and grade and quantity of cement to be used;
   4. The method for placement of the plugs; and
   5. The procedure to be used to meet the requirements of R18-9-B614(C).

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART F. CLASS II INJECTION WELL REQUIREMENTS

R18-9-F643. Class II; Construction Requirements

A. All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of known open faults or fractures within the area of review.

B. All Class II injection wells:
1. Shall be cased and cemented to prevent movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
   a. Depth to the injection zone;
   b. Depth to the bottom of all USDWs; and
   c. Estimated maximum and average injection pressures.
2. In addition the Director may consider information on:
   a. Nature of formation fluids;
   b. Lithology of injection and confining zones;
   c. External pressure, internal pressure, and axial loading;
   d. Hole size;
   e. Size and grade of all casing strings; and
   f. Class of cement.

C. The requirements in subsection (B) need not apply to existing or newly converted Class II wells located in existing fields if:
1. Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and
2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.

D. The requirements in subsection (B) need not apply to newly drilled wells in existing fields if:
1. They meet the requirements of the State for casing and cementing applicable to that field at the time of submission of the State program to the Administrator; and
2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.

E. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, these logs and tests shall include:
1. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.
2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements:
   a. For surface casing intended to protect USDWs in areas where the lithology has not been determined:
      i. Electric and caliper logs before casing is installed; and
      ii. A cement bond, temperature, or density log after the casing is set and cemented.
   b. For intermediate and long strings of casing intended to facilitate injection:
      i. Electric, porosity and gamma ray logs before the casing is installed;
      ii. Fracture finder logs; and
      iii. A cement bond, temperature, or density log after the casing is set and cemented.

F. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:
1. Fluid pressure;
2. Estimated fracture pressure; and
3. Physical and chemical characteristics of the injection zone.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-F644. Class II; Operating, Monitoring, and Reporting Requirements

A. Operating requirements shall, at a minimum, specify that:
1. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore shall be prohibited.

B. Monitoring requirements shall, at a minimum, include:
1. Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;
2. Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:
   a. Weekly for produced fluid disposal operations;
   b. Monthly for enhanced recovery operations;
   c. Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and
   d. Daily during the injection phase of cyclic steam operations; and
   e. Record one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days;
3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the injection well;
4. Maintenance of the results of all monitoring until the next permit review; and
5. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an

individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

C. Reporting requirements.

1. Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under subsection (B). Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.
2. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-F645. Class II; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:

1. Information required in R18-9-C616.
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspended. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.
3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.
4. Proposed operating data:
   a. Average and maximum daily rate and volume of fluids to be injected;
   b. Average and maximum injection pressure; and
   c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.
5. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth.
6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.
7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.
9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. In addition the Director may consider the following:

1. Proposed formation testing program to obtain the information required by R18-9-F643(F);
2. Proposed stimulation program;
3. Proposed injection procedure;
4. Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an USDW;
5. Plans for meeting the monitoring requirements of R18-9-F644(B).

D. Prior to granting approval for the operation of a Class II well the Director shall consider the following information:

1. All available logging and testing program data on the well;
2. A demonstration of mechanical integrity pursuant to R18-9-B613;
3. The anticipated maximum pressure and flow rate at which the permittee will operate;
4. The results of the formation testing program;
5. The actual injection procedure; and
6. For new wells the status of corrective action on defective wells in the area of review.

E. Prior to granting approval for the plugging and abandonment of a Class II well the Director shall consider the following information:

1. The type, and number of plugs to be used;
2. The placement of each plug including the elevation of top and bottom;
3. The type, grade, and quantity of cement to be used;
4. The method of placement of the plugs; and
5. The procedure to be used to meet the requirements of R18-9-B614(A).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART G. CLASS III INJECTION WELL REQUIREMENTS

R18-9-G646. Class III; Construction Requirements

A. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between USDWs. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where they have substantial evidence that no contamination of USDWs would result. The casing and cement used in the construction of each

newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
1. Depth to the injection zone;
2. Injection pressure, external pressure, internal pressure, axial loading, etc.;
3. Hole size;
4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint specification, and construction material;
5. Corrosiveness of injected fluids and formation fluids;
6. Lithology of injection and confining zones; and
7. Type and grade of cement.

B. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

C. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:
1. Fluid pressure;
2. Fracture pressure; and
3. Physical and chemical characteristics of the formation fluids.

D. Where the injection formation is not a water-bearing formation, the information in subsection (C)(2) must be submitted.

E. Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any USDWs above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

F. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

G. Where the injection wells penetrate an USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

H. In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:
1. The population relying on the USDW affected or potentially affected by the injection operation;
2. The proximity of the injection operation to points of withdrawal of drinking water;
3. The local geology and hydrology;
4. The operating pressures and whether a negative pressure gradient is being maintained;
5. The nature and volume of the injected fluid, the formation water, and the process by-products; and
6. The injection well density.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-G647. Class III; Operating, Monitoring, and Reporting Requirements

A. Operating requirements prescribed shall, at a minimum, specify that:
1. Except during well stimulation, injection pressure at the wellhead shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.

B. Monitoring requirements shall, at a minimum, specify:
1. Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by R18-9-G648(B)(7)(c) is incorrect or incomplete, a new analysis as required by R18-9-G648(B)(7)(c) shall be provided to the Director.
2. Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.
3. Demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well for salt solution mining.
4. Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by R18-9-G646(E), semi-monthly.
5. Quarterly monitoring of wells required by R18-9-G646(G).
6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

C. Reporting requirements shall, at a minimum, include:
1. Quarterly reporting to the Director on required monitoring;
2. Results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and
3. Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-G648. Class III; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class III wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class III well or area to operate or the construction of a new Class III well the Director shall consider the following:
1. Information required in R18-9-C616;
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, public water systems and water wells. The map may also show surface bodies of waters, mines (surface and subsurface) quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map;
3. A tabulation of data reasonably available from public records or otherwise known to the applicant on wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells;
4. Maps and cross sections indicating the vertical limits of all USDWs within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every USDW which may be affected by the proposed injection;
5. Maps and cross sections detailing the geologic structure of the local area;
6. Generalized map and cross sections illustrating the regional geologic setting;
7. Proposed operating data:
   a. Average and maximum daily rate and volume of fluid to be injected;
   b. Average and maximum injection pressure; and
   c. Qualitative analysis and ranges in concentrations of all constituents of injected fluids. If the information is confidential pursuant to R18-9-A603 an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.
8. Proposed formation testing program to obtain the information required by R18-9-G646(C);
9. Proposed stimulation program;
10. Proposed injection procedure;
11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well;
12. Plans (including maps) for meeting the monitoring requirements of R18-9-G647(B);
13. Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;
14. Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into USDWs;
15. A certificate that the applicant has assured, through a performance bond, or other appropriate means, the resources necessary to close, plug, or abandon the well as required by R18-9-D636(A)(5); and
16. The corrective action proposed to be taken under R18-9-D639.

C. Prior to granting approval for the operation of a Class III well the Director shall consider the following information:
1. All available logging and testing data on the well;
2. A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to R18-9-B613;
3. The anticipated maximum pressure and flow rate at which the permittee will operate;
4. The results of the formation testing program;
5. The actual injection procedures; and
6. The status of corrective action on defective wells in the area of review.

D. Prior to granting approval for the plugging and abandonment of a Class III well the Director shall consider the following information:
1. The type and number of plugs to be used;
2. The placement of each plug including the elevation of the top and bottom;
3. The type, grade and quantity of cement to be used;
4. The method of placement of the plugs; and
5. The procedure to be used to meet the requirements of R18-9-B614(A).

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART H. CLASS IV INJECTION WELL REQUIREMENTS

R18-9-H649. Class IV; Closure Requirements and Remediation

A. Closure.
1. Prior to abandoning any Class IV well, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
2. The owner or operator of a Class IV well must notify the Director of intent to abandon the well at least 30 days prior to abandonment.

B. Remediation. Injection wells used to inject contaminated groundwater that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved by the Administrator or the Director pursuant to subsections (B)(1), (2) or (3):
1. Provisions for cleanup of releases under CERCLA, or
2. The requirements and provisions under RCRA, or
3. The requirements and provisions under other applicable state laws for corrective and remedial action.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V; General Requirements

A. The following requirements apply to Class V Wells authorized by rule:
1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
   a. Upon the effective date of an applicable permit denial;
   b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9-C616;
   c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or
   d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.
4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
   a. An inventory, and
   b. Class V authorized by rule transfer fee pursuant to R18-14-111(3).

B. The following requirements apply for all Class V Wells:
1. With certain exceptions listed in subsection (B)(2), Class V injection activity is "authorized by rule," meaning owners and operators must comply with all the requirements of this Article but do not have to get an individual permit. Well authorization expires once the injection well has been properly closed.
2. A Class V well requires a permit and shall no longer be authorized by rule upon any of the following:
   a. Failure to comply with the prohibition of movement standard in R18-9-B608(A).
   b. The Director specifically requires a Class V permit for the well to operate pursuant to R18-9-I651. In which case rule authorization expires upon the effective date of the permit issued, or you are prohibited from injecting into your well upon:
      i. Failure to submit a permit application in a timely manner as specified in a notice from the Director; or
      ii. Upon the effective date of permit denial.
   c. Failure to submit inventory information as required under R18-9-I652.
   d. Failure to comply with the Director's request for additional information under R18-9-I653 in a timely manner.
3. Prior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C).
4. In limited cases, the Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I651. Class V; Requiring a Permit

A. The Director may require the owner or operator of any Class V injection well authorized by rule under this Article to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:
1. The injection well is not in compliance with any requirement under this Article or A.R.S. Title 49, Chapter 2, Article 3.3;
2. The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule; or
3. The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

B. If an individual or area UIC permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
1. A brief statement of the reasons for the decision,
2. An application form,
3. A statement setting a deadline to file the application,
4. A statement that on the effective date of issuance or denial of the individual or area UIC permit, coverage by rule will automatically terminate.
5. The applicant's right to appeal the individual permit requirement under A.R.S. § 49-323 and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.

C. An owner or operator of a well authorized by rule may request to be excluded from the coverage of this Section by applying for an individual or area UIC permit. The owner or operator shall submit an application under R18-9-C616 with reasons supporting the request to the Director. The Director may grant any such requests.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I652. Class V; Inventory Requirements for Class V Wells Authorized by Rule

A. The owner or operator of an injection well authorized by rule under R18-9-I650 shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the timeframe specified in subsection (D).

B. As part of the inventory, the Director shall require and the owner/operator shall provide at least the following information:
1. Facility name and location;
2. Name and address of legal contact;
3. Ownership of facility;

4. Nature and type of injection well; and
5. Operating status of injection well.

C. Upon approval of the Arizona UIC Program, the Director shall notify all known owners or operators of injection wells of their duty to submit inventory information in the manner specified by the Director.

D. The owner or operator of an injection well shall submit inventory information no later than one year after the effective date of the Arizona UIC program. The Director need not require inventory information from any facility with interim status under RCRA.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I653. Class V; Requiring Other Information

A. In addition to the inventory requirements under R18-9-I652, the Director may require the owner or operator of any well authorized by rule under this Article to submit information as deemed necessary by the Director to determine whether a well may be endangering an USDW in violation of R18-9-B608 of this Part.

B. Such information requirements may include, but are not limited to:
1. Performance of ground-water monitoring and the periodic submission of reports of such monitoring;
2. An analysis of injected fluids, including periodic submission of such analyses; and
3. A description of the geologic strata through and into which injection is taking place.

C. Any request for information under this Section shall be made in writing, and include a brief statement of the reasons for requiring the information. An owner and operator shall submit the information within the time period or time periods provided in the notice.

D. An owner or operator of an injection well authorized by rule under this Part is prohibited from injecting into the well upon failure of the owner or operator to comply with a request for information within the time period or time periods specified by the Director pursuant to subsection (C). An owner or operator of a well prohibited from injection under this Section shall not resume injection except under a permit issued pursuant to R18-9-I651; R18-9-C616, R18-9-C624, or R18-9-C625.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I654. Class V; Prohibition of Class V Cesspools and Motor Vehicle Waste Disposal Wells

The construction and operation of cesspools and motor vehicle waste disposal wells are prohibited.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I655. Class V; Prohibition of Non-Experimental Class V Wells for Geologic Sequestration

The construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART J. CLASS VI INJECTION WELL REQUIREMENTS

R18-9-J656. Class VI; Applicability

A. This Part establishes criteria and standards for underground injection control programs to regulate any Class VI carbon dioxide geologic sequestration injection wells.

B. This Part applies to any well used to inject carbon dioxide specifically for the purpose of geologic sequestration.

C. This Part also applies to owners or operators of permit- or rule-authorized Class V experimental carbon dioxide injection projects who seek to apply for Class VI geologic sequestration permit for their well or wells. Owners or operators seeking to convert existing Class I, Class II, or Class V experimental wells to Class VI geologic sequestration wells must demonstrate to the Director that the wells were engineered and constructed to meet the requirements of R18-9-J661 and ensure protection of USDWs, in lieu of requirements at R18-9-J661 and R18-9-J662. A converted well must still meet all other requirements under Part F of this Article.

D. The following definitions apply to this Part and govern for Class VI wells to the extent that these definitions conflict with those in R18-9-A601:
1. "Area of review" means the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization, monitoring, and operational data as set forth in R18-9-J659.
2. "Carbon dioxide plume" means the extent underground, in three dimensions, of an injected carbon dioxide stream.
3. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This Part does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under A.R.S. § 49-921.
4. "Confining zone" means a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone or zones that acts as barrier to fluid movement. For Class VI wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone or zones.
5. "Corrective action" means the use of Director-approved methods to ensure that wells within the area of review do not serve as conduits for the movement of fluids into USDWs.
6. "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
7. "Geologic sequestration project" means an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW; or, wells used for geologic sequestration of carbon dioxide that

have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or, wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 and R18-9-A606. It includes the subsurface three-dimensional extent of the carbon dioxide plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.

8. "Injection zone" means a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.
9. "Post-injection site care" means appropriate monitoring and other actions, including corrective action, needed following cessation of injection to ensure that USDWs are not endangered, as required under R18-9-J668.
10. "Pressure front" means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this Part, the pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.
11. "Site closure" means the point/time, as determined by the Director following the requirements under R18-9-J668, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.
12. "Transmissive fault" or "fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J657. Class VI; Required Permit Information

A. This Section sets forth the information which must be considered by the Director in authorizing Class VI wells. For converted Class I, Class II, or Class V experimental wells, certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director, and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for the construction of a new Class VI well or the conversion of an existing Class I, Class II, or Class V well to a Class VI well, the owner or operator shall submit, pursuant to R18-9-J666, and the Director shall consider the following:

1. Information required in R18-9-C616(D)(1) through (9);
2. A map showing the injection well for which a permit is sought and the applicable area of review consistent with R18-9-J659. Within the area of review, the map must show the number or name, and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes, deep stratigraphic boreholes, State- or EPA-approved subsurface cleanup sites, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, other pertinent surface features including structures intended for human occupancy, State, Tribal, and Territory boundaries, and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
3. Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including:
   a. Maps and cross sections of the area of review;
   b. The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zone or zones in the area of review and a determination that they would not interfere with containment;
   c. Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zone or zones; including geology/facies changes based on field data which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;
   d. Geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone or zones;
   e. Information on the seismic history including the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and
   f. Geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the local area.
4. A tabulation of all wells within the area of review which penetrate the injection or confining zone or zones. Such data must include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
5. Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells and springs within the area of review, their positions relative to the injection zone or zones, and the direction of water movement, where known;
6. Baseline geochemical data on subsurface formations, including all USDWs in the area of review;
7. Proposed operating data for the proposed geologic sequestration site:
   a. Average and maximum daily rate and volume and/or mass and total anticipated volume and/or mass of the carbon dioxide stream;
   b. Average and maximum injection pressure;
   c. The source or sources of the carbon dioxide stream; and
   d. An analysis of the chemical and physical characteristics of the carbon dioxide stream.
8. Proposed pre-operational formation testing program to obtain an analysis of the chemical and physical characteristics of the injection zone or zones and confining zone or zones and that meets the requirements at R18-9-J662;
9. Proposed stimulation program, a description of stimulation fluids to be used and a determination that stimulation will not interfere with containment;
10. Proposed procedure to outline steps necessary to conduct injection operation;
11. Schematics or other appropriate drawings of the surface and subsurface construction details of the well;
12. Injection well construction procedures that meet the requirements of R18-9-J661;

13. Proposed area of review and corrective action plan that meets the requirements under R18-9-J659;
14. A demonstration, satisfactory to the Director, that the applicant has met the financial responsibility requirements under R18-9-J660;
15. Proposed testing and monitoring plan required by R18-9-J665;
16. Proposed injection well plugging plan required by R18-9-J667(B);
17. Proposed post-injection site care and site closure plan required by R18-9-J668(A);
18. At the Director's discretion, a demonstration of an alternative post-injection site care timeframe required by R18-9-J668(C);
19. Proposed emergency and remedial response plan required by R18-9-J669;
20. A list of contacts, submitted to the Director, for those States, Tribes, and Territories identified to be within the area of review of the Class VI project based on information provided in subsection (B)(2);
21. A listing of any historic property or potential historic property as defined by R12-8-301; and
22. Any other information requested by the Director.

C. The Director shall notify, in writing, any States, Tribes, or Territories within the area of review of the Class VI project based on information provided in subsections (B)(2) and (B)(20) of the permit application.

D. Prior to granting approval for the operation of a Class VI well, the Director shall consider the following information:

1. The final area of review based on modeling, using data obtained during logging and testing of the well and the formation as required by subsections (D)(2), (3), (4), (6), (7), and (10);
2. Any relevant updates, based on data obtained during logging and testing of the well and the formation as required by subsections (D)(3), (4), (6), (7), and (10), to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of subsection (B)(3);
3. Information on the compatibility of the carbon dioxide stream with fluids in the injection zone or zones and minerals in both the injection and the confining zone or zones, based on the results of the formation testing program, and with the materials used to construct the well;
4. The results of the formation testing program required at subsection (B)(8);
5. Final injection well construction procedures that meet the requirements of R18-9-J661;
6. The status of corrective action on wells in the area of review;
7. All available logging and testing program data on the well required by R18-9-J662;
8. A demonstration of mechanical integrity pursuant to R18-9-J664;
9. Any updates to the proposed area of review and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under subsection (B), which are necessary to address new information collected during logging and testing of the well and the formation as required by all subsections of this Section, and any updates to the alternative post-injection site care timeframe demonstration submitted under subsection (B), which are necessary to address new information collected during the logging and testing of the well and the formation as required by this Section; and
10. Any other information requested by the Director.

E. Owners or operators seeking a waiver of the requirement to inject below the lowermost USDW must also refer to R18-9-J670 and submit a supplemental report, as required at R18-9-J670. The supplemental report is not part of the permit application.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J658. Class VI; Minimum Criteria for Siting

A. Owners or operators of Class VI wells must demonstrate to the satisfaction of the Director that the wells will be sited in areas with a suitable geologic system. The owners or operators must demonstrate that the geologic system comprises:

1. An injection zone or zones of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the carbon dioxide stream.
2. Confining zone or zones free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without initiating or propagating fractures in the confining zone or zones.

B. The Director may require owners or operators of Class VI wells to identify and characterize additional zones that will impede vertical fluid movement, are free of faults and fractures that may interfere with containment, allow for pressure dissipation, and provide additional opportunities for monitoring, mitigation, and remediation.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J659. Class VI; Area of Review and Corrective Action

A. The area of review is the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and is based on available site characterization, monitoring, and operational data.

B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic sequestration project, periodically reevaluate the delineation, and perform corrective action that meets the requirements of this Section and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application for approval by the Director, the owner or operator must submit an area of review and corrective action plan that includes the following information:

1. The method for delineating the area of review that meets the requirements of subsection (C), including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based.

2. A description of:
   a. The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;
   b. The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established in subsection (B)(2)(a);
   c. How monitoring and operational data will be used to inform an area of review reevaluation; and
   d. How corrective action will be conducted to meet the requirements of subsection (D), including what corrective action will be performed prior to injection and what, if any, portions of the area of review will have corrective action addressed on a phased basis and how the phasing will be determined; how corrective action will be adjusted if there are changes in the area of review; and how site access will be guaranteed for future corrective action.

C. Owners or operators of Class VI wells must perform the following actions to delineate the area of review and identify all wells that require corrective action:
1. Predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until the end of a fixed time period as determined by the Director. The model must:
   a. Be based on detailed geologic data collected to characterize the injection zone zones, confining zone or zones and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;
   b. Take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and
   c. Consider potential migration through faults, fractures, and artificial penetrations.
2. Using methods approved by the Director, identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zone or zones. Provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require; and
3. Determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.

D. Owners or operators of Class VI wells must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible with the carbon dioxide stream, where appropriate.

E. At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, owners or operators must:
1. Reevaluate the area of review in the same manner specified in subsection (C)(1);
2. Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection (C);
3. Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection (C); and
4. Submit an amended area of review and corrective action plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate.

F. The emergency and remedial response plan and the demonstration of financial responsibility must account for the area of review delineated as specified in subsection (C)(1) or the most recently evaluated area of review delineated under subsection (E), regardless of whether or not corrective action in the area of review is phased.

G. All modeling inputs and data used to support area of review reevaluations under subsection (E) shall be retained for 10 years.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J660. Class VI; Financial Responsibility

A. The owner or operator must demonstrate and maintain financial responsibility as determined by the Director that meets the following conditions:
1. The financial responsibility instrument or instruments used must be from the following list of qualifying instruments:
   a. Trust Funds;
   b. Surety Bonds;
   c. Letter of Credit;
   d. Insurance;
   e. Self Insurance (i.e., Financial Test and Corporate Guarantee);
   f. Escrow Account;
   g. Any other instrument or instruments satisfactory to the Director.
2. The qualifying instrument or instruments must be sufficient to cover the cost of:
   a. Corrective action under R18-9-J659;
   b. Injection well plugging under R18-9-J667;
   c. Post injection site care and site closure under R18-9-J668; and
   d. Emergency and remedial response under R18-9-J669.
3. The financial responsibility instrument or instruments must be sufficient to address endangerment of USDWs.
4. The qualifying financial responsibility instrument or instruments must comprise protective conditions of coverage.
   a. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation

provisions, specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

i. Cancellation – for purposes of this Part, an owner or operator must provide that their financial mechanism may not cancel, terminate or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Director. The cancellation must not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Director.

ii. Renewal – for purposes of this Part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

iii. Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that on or before the date of expiration: The Director deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid.

5. The qualifying financial responsibility instrument or instruments must be approved by the Director.
   a. The Director shall consider and approve the financial responsibility demonstration for all the phases of the geologic sequestration project prior to issue a Class VI permit under R18-9-J657.
   b. The owner or operator must provide any updated information related to their financial responsibility instrument or instruments on an annual basis and if there are any changes, the Director must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instrument or instruments used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Director's review of the financial responsibility demonstration.
   c. The Director may disapprove the use of a financial instrument if they determine that it is not sufficient to meet the requirements of this Section.
6. The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.
   a. In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase such combination must be limited to instruments that are not based on financial strength or performance, for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.
   b. When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party providers either have passed financial strength requirements based on credit ratings; or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.
   c. An owner or operator using certain types of third-party instruments must establish a standby trust to enable ADEQ to be party to the financial responsibility agreement without ADEQ being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.
   d. An owner or operator may deposit money to an escrow account to cover financial responsibility requirements; this account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.
   e. An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects. In order to satisfy this requirement the owner or operator must meet a Tangible Net Worth of an amount approved by the Director, have a Net working capital and tangible net worth each at least six times the sum of the current well plugging, post injection site care and site closure cost, have assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current well plugging, post injection site care and site closure cost, and must submit a report of its bond rating and financial information annually. In addition the owner or operator must either: Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or meet all of the following five financial ratio thresholds: A ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabili-

ties greater than 0.1; A ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.

f. An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

g. An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring financial responsibility. This insurance policy must be obtained from a third party provider.

B. The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

1. The owner or operator must maintain financial responsibility and resources until:
   a. The Director receives and approves the completed post-injection site care and site closure plan; and
   b. The Director approves site closure.
2. The owner or operator may be released from a financial instrument in the following circumstances:
   a. The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the Director, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required; or
   b. The owner or operator has submitted a replacement financial instrument and received written approval from the Director accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.

C. The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well or wells, post-injection site care and site closure, and emergency and remedial response.

1. The cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.
2. During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument or instruments used to comply with subsection (A) and provide this adjustment to the Director. The owner or operator must also provide to the Director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and remedial response plan as required under R18-9-J669.
3. The Director must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after the Director has approved the request to modify the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and response plan as required under R18-9-J669, if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawal of funds must be approved by the Director. Any decrease to the value of the financial assurance instrument must first be approved by the Director. The revised cost estimate must be adjusted for inflation as specified at subsection (C)(2).
4. Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Director.

D. The owner or operator must notify the Director by certified mail of adverse financial conditions such as bankruptcy that may affect the ability to carry out injection well plugging and post-injection site care and site closure.

1. In the event that the owner or operator or the third party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.
2. A guarantor of a corporate guarantee must make such a notification to the Director if they are named as debtor, as required under the terms of the corporate guarantee.
3. An owner or operator who fulfills the requirements of subsection (A) by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days after such an event.

E. The owner or operator must provide an adjustment of the cost estimate to the Director within 60 days of notification by the Director, if the Director determines during the annual evaluation of the qualifying financial responsibility instrument or instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action as required under R18-9-J659, injection well plugging under R18-9-J667, post-injection site care and site closure as required under R18-9-J668, and emergency and remedial response as required under R18-9-J669.

F. The Director must approve the use and length of pay-in-periods for trust funds or escrow accounts.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J661. Class VI; Injection Well Construction Requirements

A. The owner or operator must ensure that all Class VI wells are constructed and completed to:
1. Prevent the movement of fluids into or between USDWs or into any unauthorized zones;
2. Permit the use of appropriate testing devices and workover tools; and
3. Permit continuous monitoring of the annulus space between the injection tubing and long string casing.

B. Casing and Cementing of Class VI Wells.
1. Casing and cement or other materials used in the construction of each Class VI well must have sufficient structural strength and be designed for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Director to determine and specify casing and cementing requirements, the owner or operator must provide the following information:
   a. Depth to the injection zone or zones;
   b. Injection pressure, external pressure, internal pressure, and axial loading;
   c. Hole size;
   d. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
   e. Corrosiveness of the carbon dioxide stream and formation fluids;
   f. Down-hole temperatures;
   g. Lithology of injection and confining zone or zones;
   h. Type or grade of cement and cement additives; and
   i. Quantity, chemical composition, and temperature of the carbon dioxide stream.
2. Surface casing must extend through the base of the lowermost USDW and be cemented to the surface through the use of a single or multiple strings of casing and cement.
3. At least one long string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages.
4. Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.
5. Cement and cement additives must be compatible with the carbon dioxide stream and formation fluids and of sufficient quality and quantity to maintain integrity over the design life of the geologic sequestration project. The integrity and location of the cement shall be verified using technology capable of evaluating cement quality radially and identifying the location of channels to ensure that USDWs are not endangered.

C. Tubing and packer.
1. Tubing and packer materials used in the construction of each Class VI well must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director.
2. All owners or operators of Class VI wells must inject fluids through tubing with a packer set at a depth opposite a cemented interval at the location approved by the Director.
3. In order for the Director to determine and specify requirements for tubing and packer, the owner or operator must submit the following information:
   a. Depth of setting;
   b. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids;
   c. Maximum proposed injection pressure;
   d. Maximum proposed annular pressure;
   e. Proposed injection rate (intermittent or continuous) and volume and/or mass of the carbon dioxide stream;
   f. Size of tubing and casing; and
   g. Tubing tensile, burst, and collapse strengths.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J662. Class VI; Logging, Sampling, and Testing Prior to Well Operation

A. During the drilling and construction of a Class VI injection well, the owner or operator must run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under R18-9-J661 and to establish accurate baseline data against which future measurements may be compared. The owner or operator must submit to the Director a descriptive report prepared by a knowledgeable log analyst that includes an interpretation of the results of such logs and tests. At a minimum, such logs and tests must include:
1. Deviation checks during drilling on all holes constructed by drilling a pilot hole which is enlarged by reaming or another method. Such checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and
2. Before and upon installation of the surface casing:
   a. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
   b. A cement bond and variable density log to evaluate cement quality radially, and a temperature log after the casing is set and cemented.
3. Before and upon installation of the long string casing:
   a. Resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs, and any other logs

the Director requires for the given geology before the casing is installed; and
b. A cement bond and variable density log, and a temperature log after the casing is set and cemented.
4. A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include:
a. A pressure test with liquid or gas;
b. A tracer survey such as oxygen-activation logging;
c. A temperature or noise log;
d. A casing inspection log; and
5. Any alternative methods that provide equivalent or better information and that are required by and/or approved of by the Director.

B. The owner or operator must take whole cores or sidewall cores of the injection zone and confining system and formation fluid samples from the injection zone or zones, and must submit to the Director a detailed report prepared by a log analyst that includes: Well log analyses (including well logs), core analyses, and formation fluid sample information. The Director may accept information on cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.

C. The owner or operator must record the fluid temperature, pH, conductivity, reservoir pressure, and static fluid level of the injection zone or zones.

D. At a minimum, the owner or operator must determine or calculate the following information concerning the injection and confining zone or zones:
1. Fracture pressure;
2. Other physical and chemical characteristics of the injection and confining zone or zones; and
3. Physical and chemical characteristics of the formation fluids in the injection zone or zones.

E. Upon completion, but prior to operation, the owner or operator must conduct the following tests to verify hydrogeologic characteristics of the injection zone or zones:
1. A pressure fall-off test; and,
2. A pump test; or
3. Injectivity tests.

F. The owner or operator must provide the Director with the opportunity to witness all logging and testing by this Part. The owner or operator must submit a schedule of such activities to the Director 30 days prior to conducting the first test and submit any changes to the schedule 30 days prior to the next scheduled test.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J663. Class VI; Injection Well Operating Requirements

A. Except during stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of the injection zone or zones so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zone or zones. In no case may injection pressure initiate fractures in the confining zone or zones or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to requirements at R18-9-J657(B)(9), all stimulation programs must be approved by the Director as part of the permit application and incorporated into the permit.

B. Injection between the outermost casing protecting USDWs and the well bore is prohibited.

C. The owner or operator must fill the annulus between the tubing and the long string casing with a non-corrosive fluid approved by the Director. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs.

D. Other than during periods of well workover (maintenance) approved by the Director in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.

E. The owner or operator must install and use:
1. Continuous recording devices to monitor: The injection pressure; the rate, volume and/or mass, and temperature of the carbon dioxide stream; and the pressure on the annulus between the tubing and the long string casing and annulus fluid volume; and
2. Alarms and automatic surface shut-off systems or, at the discretion of the Director, down-hole shut-off systems for onshore wells or, other mechanical devices that provide equivalent protection.

F. If a shutdown (such as down-hole or at the surface) is triggered or a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify as expeditiously as possible the cause of the shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under subsection (E) otherwise indicates that the well may be lacking mechanical integrity, the owner or operator must:
1. Immediately cease injection;
2. Take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;
3. Notify the Director within 24 hours;
4. Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection; and
5. Notify the Director when injection can be expected to resume.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J664. Class VI; Mechanical Integrity

A. A Class VI well has mechanical integrity if:
1. There is no significant leak in the casing, tubing, or packer; and
2. There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.

B. To evaluate the absence of significant leaks under subsection (A)(1), owners or operators must, following an initial annulus pressure test, continuously monitor injection pressure, rate, injected volumes; pressure on the annulus between tubing and long-string casing; and annulus fluid volume as specified in R18-9-J663;

C. At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under subsection (A)(2):

1. An approved tracer survey such as an oxygen-activation log; or
2. A temperature or noise log.

D. If required by the Director, at a frequency specified in the testing and monitoring plan required at R18-9-J665, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.

E. The Director may require any other test to evaluate mechanical integrity under subsections (A)(1) or (2). Also, the Director may allow the use of a test to demonstrate mechanical integrity other than those listed above with the written approval of the Administrator. To obtain approval for a new mechanical integrity test, the Director must submit a written request to the Administrator setting forth the proposed test and all technical data supporting its use.

F. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test or tests and the method or methods used. In making his or her evaluation, the Director must review monitoring and other test data submitted since the previous evaluation.

G. The Director may require additional or alternative tests if the results presented by the owner or operator under subsections (A) through (F) are not satisfactory to the Director to demonstrate that there is no significant leak in the casing, tubing, or packer, or to demonstrate that there is no significant movement of fluid into a USDW resulting from the injection activity as stated in subsections (A)(1) and (2).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J665. Class VI; Testing and Monitoring Requirements

The owner or operator of a Class VI well must prepare, maintain, and comply with a testing and monitoring plan to verify that the geologic sequestration project is operating as permitted and is not endangering USDWs. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The testing and monitoring plan must be submitted with the permit application, for Director approval, and must include a description of how the owner or operator will meet the requirements of this Section, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum, include:

1. Analysis of the carbon dioxide stream with sufficient frequency to yield data representative of its chemical and physical characteristics;
2. Installation and use, except during well workovers as defined in R18-9-J663, of continuous recording devices to monitor injection pressure, rate, and volume; the pressure on the annulus between the tubing and the long string casing; and the annulus fluid volume added;
3. Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in R18-9-J661, by:
   a. Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream; or
   b. Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or
   c. Using an alternative method approved by the Director;
4. Periodic monitoring of the ground water quality and geochemical changes above the confining zone or zones that may be a result of carbon dioxide movement through the confining zone or zones or additional identified zones including:
   a. The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and
   b. The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected under R18-9-J657 and on any modeling results in the area of review evaluation required by R18-9-J659(C).
5. A demonstration of external mechanical integrity pursuant to R18-9-J664(C) at least once per year until the injection well is plugged; and, if required by the Director, a casing inspection log pursuant to requirements under R18-9-J664(D) at a frequency established in the testing and monitoring plan;
6. A pressure fall-off test at least once every five years unless more frequent testing is required by the Director based on site-specific information;
7. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using:
   a. Direct methods in the injection zone or zones; and,
   b. Indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys and/or down-hole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate;
8. The Director may require surface air monitoring and/or soil gas monitoring to detect movement of carbon dioxide that could endanger a USDW.
   a. Design of Class VI surface air and/or soil gas monitoring must be based on potential risks to USDWs within the area of review;
   b. The monitoring frequency and spatial distribution of surface air monitoring and/or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation and/or compliance with standards under R18-9-B608;
   c. If an owner or operator demonstrates that monitoring employed under 40 CFR §§ 98.440 to 98.449 (Clean Air Act, 42 U.S.C. 7401 et seq.) accomplishes the goals of subsections (A)(8)(a) and (b), and meets the requirements pursuant to R18-9-J666(3)(e), a Director that requires surface air/soil gas monitoring must approve the use of monitoring employed under 40 CFR §§ 98.440 to 98.449. Compliance with 40 CFR §§ 98.440 to 98.449 pursuant

to this provision is considered a condition of the Class VI permit;

9. Any additional monitoring, as required by the Director, necessary to support, upgrade, and improve computational modeling of the area of review evaluation required under R18-9-J659(C) and to determine compliance with standards under R18-9-B608;
10. The owner or operator shall periodically review the testing and monitoring plan to incorporate monitoring data collected under this Part, operational data collected under R18-9-J663, and the most recent area of review reevaluation performed under R18-9-J659(E). In no case shall the owner or operator review the testing and monitoring plan less often than once every five years. Based on this review, the owner or operator shall submit an amended testing and monitoring plan or demonstrate to the Director that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
    a. Within one year of an area of review reevaluation;
    b. Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Director; or
    c. When required by the Director.
11. A quality assurance and surveillance plan for all testing and monitoring requirements.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J666. Class VI; Reporting Requirements
The owner or operator must provide at a minimum, the following reports to the Director, and as specified in subsection (5) to EPA, for each permitted Class VI well:

1. Semi-annual reports containing:
    a. Any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data;
    b. Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;
    c. A description of any event that exceeds operating parameters for annulus pressure or injection pressure specified in the permit;
    d. A description of any event which triggers a shut-off device required pursuant to R18-9-J663(E) and the response taken;
    e. The monthly volume and/or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;
    f. Monthly annulus fluid volume added; and
    g. The results of monitoring prescribed under R18-9-J665.
2. Report, within 30 days, the results of:
    a. Periodic tests of mechanical integrity;
    b. Any well workover; and,
    c. Any other test of the injection well conducted by the permittee if required by the Director.
3. Report, within 24 hours:
    a. Any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;
    b. Any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;
    c. Any triggering of a shut-off system (i.e., down-hole or at the surface);
    d. Any failure to maintain mechanical integrity; or
    e. Pursuant to compliance with the requirement at R18-9-J665(8) for surface air/soil gas monitoring or other monitoring technologies, if required by the Director, any release of carbon dioxide to the atmosphere or biosphere.
4. Owners or operators must notify the Director in writing 30 days in advance of:
    a. Any planned well workover;
    b. Any planned stimulation activities, other than stimulation for formation testing conducted under R18-9-J657; and
    c. Any other planned test of the injection well conducted by the permittee.
5. Owners or operators must submit all required reports, submittals, and notifications under Part J of this Article to EPA in an electronic format approved by EPA.
6. Records shall be retained by the owner or operator as follows:
    a. All data collected under R18-9-J657 for Class VI permit applications shall be retained throughout the life of the geologic sequestration project and for 10 years following site closure.
    b. Data on the nature and composition of all injected fluids collected pursuant to R18-9-J665(1) shall be retained until 10 years after site closure. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
    c. Monitoring data collected pursuant to R18-9-J665(2) through (9) shall be retained for 10 years after it is collected.
    d. Well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements at R18-9-J668(F) and (H) shall be retained for 10 years following site closure.
    e. The Director has authority to require the owner or operator to retain any records required in this Part for longer than 10 years after site closure.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J667. Class VI; Injection Well Plugging

A. Prior to the well plugging, the owner or operator must flush each Class VI injection well with a buffer fluid, determine bottomhole reservoir pressure, and perform a final external mechanical integrity test.

B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan that is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The well plugging plan must be submitted as part of the permit application and must include the following information:
1. Appropriate tests or measures for determining bottomhole reservoir pressure;
2. Appropriate testing methods to ensure external mechanical integrity as specified in R18-9-J664;
3. The type and number of plugs to be used;
4. The placement of each plug, including the elevation of the top and bottom of each plug;
5. The type, grade, and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and
6. The method of placement of the plugs.

C. The owner or operator must notify the Director in writing pursuant to R18-9-J666(5), at least 60 days before plugging of a well. At this time, if any changes have been made to the original well plugging plan, the owner or operator must also provide the revised well plugging plan. The Director may allow for a shorter notice period. Any amendments to the injection well plugging plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.

D. Within 60 days after plugging, the owner or operator must submit, pursuant to R18-9-J666(5), a plugging report to the Director. The report must be certified as accurate by the owner or operator and by the person who performed the plugging operation, if other than the owner or operator. The owner or operator shall retain the well plugging report for 10 years following site closure.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J668. Class VI; Post-Injection Site Care and Site Closure

A. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan for post-injection site care and site closure that meets the requirements of subsection (A)(2) and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.
1. The owner or operator must submit the post-injection site care and site closure plan as a part of the permit application to be approved by the Director.
2. The post-injection site care and site closure plan must include the following information:
   a. The pressure differential between pre-injection and predicted post-injection pressures in the injection zone or zones;
   b. The predicted position of the carbon dioxide plume and associated pressure front at site closure as demonstrated in the area of review evaluation required under R18-9-J659(C)(1);
   c. A description of post-injection monitoring location, methods, and proposed frequency;
   d. A proposed schedule for submitting post-injection site care monitoring results to the Director pursuant to R18-9-J666(5); and
   e. The duration of the post-injection site care timeframe and, if approved by the Director, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.
3. Upon cessation of injection, owners or operators of Class VI wells must either submit an amended post-injection site care and site closure plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the post-injection site care and site closure plan must be approved by the Director, be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.
4. At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for the Director's approval within 30 days of such change.

B. The owner or operator shall monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that USDWs are not being endangered.
1. Following the cessation of injection, the owner or operator shall continue to conduct monitoring as specified in the Director-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Director pursuant to requirements in subsection (C), unless they make a demonstration under subsection (B)(2). The monitoring must continue until the geologic sequestration project no longer poses an endangerment to USDWs and the demonstration under subsection (B)(2) is submitted and approved by the Director.
2. If the owner or operator can demonstrate to the satisfaction of the Director before 50 years or prior to the end of the approved alternative timeframe based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to USDWs, the Director may approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or may authorize site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe, where they have substantial evidence that the geologic sequestration project no longer poses a risk of endangerment to USDWs.
3. Prior to authorization for site closure, the owner or operator must submit to the Director for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to USDWs.
4. If the demonstration in subsection (B)(3) cannot be made at the end of the 50-year period or at the end of the approved alternative timeframe, or if the Director does not approve the demonstration, the owner or operator must submit to the Director a plan to continue post-injection site care until a demonstration can be made and approved by the Director.

C. At the Director's discretion, the Director may approve, in consultation with EPA, an alternative post-injection site care timeframe other than the 50-year default, if an owner or operator

can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. The demonstration must be based on significant, site-specific data and information including all data and information collected pursuant to R18-9-J657 or R18-9-J658, and must contain substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to USDWs at the end of the alternative post-injection site care timeframe.

1. A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of:
   a. The results of computational modeling performed pursuant to delineation of the area of review under R18-9-J659;
   b. The predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs; and/or the timeframe for pressure decline to pre-injection pressures;
   c. The predicted rate of carbon dioxide plume migration within the injection zone, and the predicted timeframe for the cessation of migration;
   d. A description of the site-specific processes that will result in carbon dioxide trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;
   e. The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;
   f. The results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subsection (C)(1)(d) and (C)(1)(e);
   g. A characterization of the confining zone or zones including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid movement, such as carbon dioxide and formation fluids;
   h. The presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted/modeled, final extent of the carbon dioxide plume and area of elevated pressure;
   i. A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;
   j. The distance between the injection zone and the nearest USDWs above and/or below the injection zone; and
   k. Any additional site-specific factors required by the Director.
2. Information submitted to support the demonstration in subsection (C)(1) must meet the following criteria:
   a. All analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;
   b. Estimation techniques must be appropriate and EPA-certified test protocols must be used where available;
   c. Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream and injection and site conditions over the life of the geologic sequestration project;
   d. Predictive models must be calibrated using existing information where sufficient data are available;
   e. Reasonably conservative values and modeling assumptions must be used and disclosed to the Director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;
   f. An analysis must be performed to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;
   g. An approved quality assurance and quality control plan must address all aspects of the demonstration; and
   h. Any additional criteria required by the Director.

D. The owner or operator must notify the Director in writing at least 120 days before site closure. At this time, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Director may allow for a shorter notice period.

E. After the Director has authorized site closure, the owner or operator must plug all monitoring wells in a manner which will not allow movement of injection or formation fluids that endangers a USDW.

F. The owner or operator must submit a site closure report to the Director within 90 days of site closure, which must thereafter be retained at a location designated by the Director for 10 years. The report must include:
1. Documentation of appropriate injection and monitoring well plugging as specified in R18-9-J667 and subsection (E). The owner or operator must provide a copy of a survey plat which has been submitted to the local zoning authority designated by the Director. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to the Administrator of EPA Region 9;
2. Documentation of appropriate notification and information to such State, local and Tribal authorities that have authority over drilling activities to enable such State, local, and Tribal authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zone or zones; and
3. Records reflecting the nature, composition, and volume of the carbon dioxide stream.

G. Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during Title search that will in perpetuity provide any potential purchaser of the property the following information:
1. The fact that land has been used to sequester carbon dioxide;
2. The name of the State agency, local authority, and/or Tribe with which the survey plat was filed, as well as the address of the Environmental Protection Agency Regional Office to which it was submitted; and

3. The volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.

H. The owner or operator must retain for 10 years following site closure, records collected during the post-injection site care period. The owner or operator must deliver the records to the Director at the conclusion of the retention period, and the records must thereafter be retained at a location designated by the Director for that purpose.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J669. Class VI; Emergency and Remedial Response

A. As part of the permit application, the owner or operator must provide the Director with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW during construction, operation, and post-injection site care periods. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

B. If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must:
1. Immediately cease injection;
2. Take all steps reasonably necessary to identify and characterize any release;
3. Notify the Director within 24 hours; and
4. Implement the emergency and remedial response plan approved by the Director.

C. The Director may allow the operator to resume injection prior to remediation if the owner or operator demonstrates that the injection operation will not endanger USDWs.

D. The owner or operator shall periodically review the emergency and remedial response plan developed under subsection (A). In no case shall the owner or operator review the emergency and remedial response plan less often than once every five years. Based on this review, the owner or operator shall submit an amended emergency and remedial response plan or demonstrate to the Director that no amendment to the emergency and remedial response plan is needed. Any amendments to the emergency and remedial response plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
1. Within one year of an area of review reevaluation;
2. Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Director; or
3. When required by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J670. Class VI; Injection Depth Waiver Requirements

A. This Section sets forth information which an owner or operator seeking a waiver of the Class VI injection depth requirements must submit to the Director; information the Director must consider in consultation with all affected Public Water System Supervision Directors; the procedure for Director-- Administrator communication and waiver issuance; and the additional requirements that apply to owners or operators of Class VI wells granted a waiver of the injection depth requirements.

B. In seeking a waiver of the requirement to inject below the lowermost USDW, the owner or operator must submit a supplemental report concurrent with permit application. The supplemental report must include the following:
1. A demonstration that the injection zone or zones is/are laterally continuous, is not a USDW, and is not hydraulically connected to USDWs; does not outcrop; has adequate injectivity, volume, and sufficient porosity to safely contain the injected carbon dioxide and formation fluids; and has appropriate geochemistry.
2. A demonstration that the injection zone or zones is/are bounded by laterally continuous, impermeable confining units above and below the injection zone or zones adequate to prevent fluid movement and pressure buildup outside of the injection zone or zones; and that the confining unit or units is/are free of transmissive faults and fractures. The report shall further characterize the regional fracture properties and contain a demonstration that such fractures will not interfere with injection, serve as conduits, or endanger USDWs.
3. A demonstration, using computational modeling, that USDWs above and below the injection zone will not be endangered as a result of fluid movement. This modeling should be conducted in conjunction with the area of review determination, as described in R18-9-J659, and is subject to requirements, as described in R18-9-J659(C), and periodic reevaluation, as described in R18-9-J659(E).
4. A demonstration that well design and construction, in conjunction with the waiver, will ensure isolation of the injectate in lieu of requirements at R18-9-J661(A)(1) and will meet well construction requirements in subsection (G).
5. A description of how the monitoring and testing and any additional plans will be tailored to the geologic sequestration project to ensure protection of USDWs above and below the injection zone or zones, if a waiver is granted.
6. Information on the location of all the public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review.
7. Any other information requested by the Director to inform the Administrator's decision to issue a waiver.

C. To inform the Administrator's decision on whether to grant a waiver of the injection depth requirements at R18-9-A604 and R18-9-J661(A)(1), the Director must submit, to the Administrator, documentation of the following:
1. An evaluation of the following information as it relates to siting, construction, and operation of a geologic sequestration project with a waiver:
   a. The integrity of the upper and lower confining units;
   b. The suitability of the injection zone or zones, such as lateral continuity, lack of transmissive faults and fractures, knowledge of current or planned artificial penetrations into the injection zone or zones, or formations below the injection zone;
   c. The potential capacity of the geologic formation or formations to sequester carbon dioxide, accounting for the availability of alternative injection sites;

d. All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;
e. Community needs, demands, and supply from drinking water resources;
f. Planned needs, potential and/or future use of USDWs and non-USDWs in the area;
g. Planned or permitted water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formation or formations and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zone or zones/formation or formations;
h. The proposed plan for securing alternative resources or treating USDW formation waters in the event of contamination related to the Class VI injection activity; and,
i. Any other applicable considerations or information requested by the Director.

2. Consultation with the Public Water System Supervision Directors of all States and Tribes having jurisdiction over lands within the area of review of a well for which a waiver is sought.
3. Any written waiver-related information submitted by the Public Water System Supervision Director or Directors to the (UIC) Director.

D. Pursuant to requirements at R18-9-C620 and concurrent with the Class VI permit application notice process, the Director shall give public notice that a waiver application has been submitted. The notice shall clearly state:
1. The depth of the proposed injection zone or zones;
2. The location of the injection well or wells;
3. The name and depth of all USDWs within the area of review;
4. A map of the area of review;
5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review; and,
6. The results of UIC-Public Water System Supervision consultation required under subsection (C)(2).

E. Following public notice, the Director shall provide all information received through the waiver application process to the Administrator. Based on the information provided, the Administrator shall provide written concurrence or non-concurrence regarding waiver issuance.
1. If the Administrator determines that additional information is required to support a decision, the Director shall provide the information. At the Administrator's discretion, they may require that public notice of the new information be initiated.
2. In no case shall a Director of a State-approved program issue a waiver without receipt of written concurrence from the Administrator.

F. If a waiver is issued, within 30 days of waiver issuance, EPA shall post the following information on the Office of Water's Web site:
1. The depth of the proposed injection zone or zones;
2. The location of the injection well or wells;
3. The name and depth of all USDWs within the area of review;
4. A map of the area of review;
5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review; and
6. The date of waiver issuance.

G. Upon receipt of a waiver of the requirement to inject below the lowermost USDW for geologic sequestration, the owner or operator of the Class VI well must comply with:
1. All requirements at R18-9-J659, R18-9-J660, R18-9-J662, R18-9-J663, R18-9-J664, R18-9-J666, R18-9-J667, and R18-9-J669;
2. All requirements at R18-9-J661 with the following modified requirements:
a. The owner or operator must ensure that Class VI wells with a waiver are constructed and completed to prevent movement of fluids into any unauthorized zones including USDWs, in lieu of requirements at R18-9-J661(A)(1).
b. The casing and cementing program must be designed to prevent the movement of fluids into any unauthorized zones including USDWs in lieu of requirements at R18-9-J661(B)(1).
c. The surface casing must extend through the base of the nearest USDW directly above the injection zone and be cemented to the surface; or, at the Director's discretion, another formation above the injection zone and below the nearest USDW above the injection zone.
3. All requirements at R18-9-J665 with the following modified requirements:
a. The owner or operator shall monitor the groundwater quality, geochemical changes, and pressure in the first USDWs immediately above and below the injection zone or zones; and in any other formations at the discretion of the Director.
b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure by using direct methods to monitor for pressure changes in the injection zone or zones; and, indirect methods (such as seismic, electrical, gravity, or electromagnetic surveys and/or downhole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate.
4. All requirements at R18-9-J668 with the following, modified post-injection site care monitoring requirements:
a. The owner or operator shall monitor the groundwater quality, geochemical changes and pressure in the first USDWs immediately above and below the injection zone; and in any other formations at the discretion of the Director.
b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure by using direct methods in the injection zone or zones; and indirect methods, unless the Director determines based on site-specific geology, that such methods are not appropriate.
5. Any additional requirements requested by the Director designed to ensure protection of USDWs above and below the injection zone or zones.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

Table 1: Applicable Standards National Primary Drinking Water Regulations

Contaminant	MCL[1] (mg/L)[2]
Alachlor	0.002
Alpha/photon emitters	15 picocuries per Liter (pCi/L)
Antimony	0.006
Arsenic	0.010
Asbestos (fibers>10 micrometers)	7 million fibers per Liter (MFL)
Atrazine	0.003
Barium	2
Benzene	0.005
Benzo(a)pyrene (PAHs)	0.0002
Beryllium	0.004
Beta photon emitters	4 millirems per year
Bromate	0.010
Cadmium	0.005
Carbofuran	0.04
Carbon tetrachloride	0.005
Chlordane	0.002
Chlorite	1.0
Chlorobenzene	0.1
Chromium (total)	0.1
Cyanide (as free cyanided)	0.2
2,4-D	0.07
Dalapon	0.2
1,2-Dibromo-3-chloropropane (DBCP)	0.0002
o-Dichlorobenzene	0.6
P-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Cis-1,2-Dichloroethylene	0.07
Trans-1,2-Dichloroethylene	0.1
Dichloromethane	0.005
1,2-Dichloropropane	0.005
Di(2-ethylhexyl) adipate	0.4
DI(2-ethylhexyl) phthalate	0.006
Dinoseb	0.007
Dioxin (2,3,7,8-TCDD)	0.00000003
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylbenzene	0.7
Ethylene dibromide	0.00005
Fecal coliform and *E.coli*	MCL[3]
Fluoride	4.0
Glyphosate	0.7
Haloacetic acids (HAA5)	0.060
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Mercury (inorganic)	0.002
Methoxychlor	0.04
Nitrate (measured as Nitrogen)	10
Nitrite (measured as Nitrogen)	1
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated biphenyls (PCBs)	0.0005
Radium 226 and Radium 228 (combined)	5 pCi/L
Selenium	0.05
Simazine	0.004
Styrene	0.1
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Total Coliforms	5.0 percent[4]
Total Trihalomethanes (TTHMs)	0.080
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Uranium	30µg/L
Vinyl chloride	0.002
Xylenes (total)	10

NOTES

[1] Maximum Contaminant Level (MCL) – The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards.

[2] Units are in milligrams per liter (mg/L) unless otherwise noted. Milligrams per liter are equivalent to parts per million (ppm).

[3] A routine sample that is fecal coliform-positive or E. coli-positive triggers repeat samples-if any repeat sample is total coliform-positive, the system has an acute MCL violation. A routine sample that is total coliform-positive, and fecal coliform-negative or E. coli-negative triggers repeat samples – if any repeat sample is fecal coliform-positive or E. coli-positive, the system has an acute MCL violation. See also Total Coliforms.

[4] No more than 5.0 percent samples total coliform-positive in a month. (For water systems that collect fewer than 40 routine sam-

ples per month, no more than one sample can be total coliform-positive per month.) Every sample that has total coliform must be analyzed for either fecal coliforms or E. coli. If two consecutive TC-positive samples, and one is also positive for E. coli or fecal coliforms, system has an acute MCL violation.

Historical Note
New Table 1, under Article 6, Part J made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 7. USE OF RECYCLED WATER

R18-9-701. Renumbered

Historical Note
Former Section R9-20-401 repealed, new Section R9-20-401 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-401 renumbered without change as Section R18-9-701 (Supp. 87-3). Amended by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-701 renumbered to R18-9-A701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-702. Renumbered

Historical Note
Former Section R9-20-402 repealed, new Section R9-20-402 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-402 renumbered without change as Section R18-9-702 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-702 renumbered to R18-9-A702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-703. Renumbered

Historical Note
Former Section R9-20-403 repealed, new Section R9-20-403 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-403 renumbered without change as Section R18-9-703 (Supp. 87-3). Editorial change to labels in subsection (c)(8) (Supp. 89-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-703 renumbered to R18-9-B701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-704. Renumbered

Historical Note
Former Section R9-20-404 repealed, new Section R9-20-404 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-404 renumbered without change as Section R18-9-704 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-704 amended by final rulemaking at 22 A.A.R. 1696, effective August 12, 2016 (Supp. 16-2). Section R18-9-704 and Table 1 renumbered to R18-9-B702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-705. Renumbered

Historical Note
Former Section R9-20-405 repealed, new Section R9-20-405 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-405 renumbered without change as Section R18-9-705 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-705 renumbered to R18-9-A703 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-706. Renumbered

Historical Note
Former Section R9-20-406 repealed, new Section R9-20-406 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-406 renumbered without change as Section R18-9-706 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-706 renumbered to R18-9-B703 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-707. Renumbered

Historical Note
Former Section R9-20-407 repealed, new Section R9-30-407 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-407 renumbered without change as Section R18-9-707 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-707 renumbered to R18-9-C701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-708. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-708 renumbered to R18-9-A704 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-709. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-709 renumbered to R18-9-A705 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-710. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-710 renumbered to R18-9-A706 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-711. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-711 renumbered to R18-9-D701 by final rulemak-

ing at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-712. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-712 renumbered to R18-9-B704 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-713. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-713 renumbered to R18-9-B705 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-714. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-714 renumbered to R18-9-B706 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-715. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-715 renumbered to R18-9-B707 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-716. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-716 renumbered to R18-9-B708 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-717. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-717 renumbered to R18-9-B709 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-718. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-718 renumbered to R18-9-B710 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-719. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-719 renumbered to R18-9-D702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-720. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART A. GENERAL PROVISIONS

R18-9-A701. Definitions

Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, R18-9-601, R18-11-301, and the following terms apply to this Article:

1. "Advanced reclaimed water treatment facility" means a facility that treats and purifies Class A+ or Class B+ reclaimed water to produce potable water suitable for distribution for human consumption. R18-9-B702(B) does not apply to an advanced reclaimed water treatment facility. Potable water produced by an advanced reclaimed water treatment facility is not reclaimed water.
2. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:
   a. The use of water subsequent to its discharge under the conditions of a National or Arizona Pollutant Discharge Elimination System permit;
   b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3;
   c. The use of industrial wastewater, reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures; or
   d. The use of potable water produced by an advanced reclaimed water treatment facility.
3. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.
4. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.
5. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.* A.R.S. § 49-201(18).
6. "Industrial wastewater" means wastewater generated from an industrial process.
7. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.
8. "Open access" means access to reclaimed water by the general public is uncontrolled.
9. "Open water conveyance" means any constructed open waterway, including canals and laterals, that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
10. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment

facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

11. *"Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.* A.R.S. § 49-201(32).
12. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.
13. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, Table A.
14. "Recycled water" means a processed water that originated as a waste or discarded water, including reclaimed water and gray water, for which the Department has designated water quality specifications to allow the water to be used as a supply.
15. "Restricted access" means that access to reclaimed water by the general public is controlled.
16. "Sewage Treatment Facility" means a sewage treatment facility as defined in 18 A.A.C. 9, Article 1.

Historical Note
New Section R18-9-A701 renumbered from R18-9-701 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A702. Applicability and Standards for Recycled Water

A. This Article applies to:
1. An owner or operator of a sewage treatment facility that generates reclaimed water for direct reuse,
2. An owner or operator of a reclaimed water blending facility,
3. A reclaimed water agent,
4. An end user of reclaimed water,
5. A person who uses recycled water regulated under this Article,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with water from an industrial wastewater treatment facility, and
7. A person who directly reuses reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

B. Reclaimed water classes A+, A, B+, B, and C specified in this Article shall meet the standards established in 18 A.A.C. 11, Article 3.

C. Nothing in this Article exempts the disposal of reclaimed water from the Aquifer Protection Permit requirements under A.R.S. Title 49, Chapter 2, Articles 1, 2, and 3.

Historical Note
New Section R18-9-A702 renumbered from R18-9-702 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A703. Recycled Water Individual Permit Application

A. To apply for a Recycled Water Individual Permit, a person shall provide the Department with:
1. The applicable permit fee specified under 18 A.A.C. 14; and
2. The following information on a form provided by the Department:
   a. The name, e-mail address, telephone number, and mailing address of the owner or operator of the facility or, if applicable, the reclaimed water agent;
   b. The latitude and longitude coordinates; township range, and section; site address, if applicable; and a map showing the facility or site location;
   c. Any other federal or state environmental permits issued to the applicant;
   d. Source of recycled water to be used;
   e. The applicant may propose for approval, and the Department may issue, a single permit that includes more than one type of recycled water allowed by this article, including for multiple classes of reclaimed water, if the applicant demonstrates the waters will be treated appropriately for the end use;
   f. The applicant may propose, and the Department may permit, the inclusion of kitchen sink and dishwasher wastewater with gray water under a Recycled Water Individual Permit, if the applicant demonstrates such waters will be treated appropriately for the end use;
   g. Estimated volume of recycled water to be used on an annual basis;
   h. Class of reclaimed water to be directly reused, if applicable;
   i. Description of the use activity;
   j. Any treatment measures utilized to meet or maintain reclaimed water quality standards or otherwise ensure the quality of the recycled water is fit for the intended use; and
   k. The applicant's certification that the information submitted in the application is true and accurate to the best of the applicant's knowledge.

B. Public participation.
1. Notice of Preliminary Decision.
   a. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination on the Department's website.
   b. The Department shall accept written comments from the public before a Recycled Water Individual Permit is issued or denied.
   c. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.
2. After publishing the notice specified in subsection (B)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information have been brought to the attention of the Department that are relevant to the permitting decision and have not been considered previously in the permitting process.
3. If the Department determines a public hearing is necessary and a public hearing has not already been noticed under subsection (B)(1)(a), the Department shall schedule a public hearing and republish the Notice of Prelimi-

nary Decision and notice of the public hearing on the Department's website.

4. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

C. Final permit issuance or denial.

1. The Department may deny a Recycled Water Individual Permit if the Department determines upon completion of the application process the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate the facility and the operation will protect public health and water quality. This determination shall be based on:
      i. The information submitted in the permit application,
      ii. Any information submitted to the Department as written public comment or following a public hearing; or
      iii. Any information relevant to the demonstration developed or acquired by the Department, or
   c. Provided false or misleading information.
2. If the Department denies a Recycled Water Individual Permit the Department shall provide the applicant with written notification explaining the following:
   a. The reasons for the denial with references to the statutes or rules on which the denial is based.
   b. The applicant's right to appeal the denial, including the number of days the applicant has to file a notice of appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section R18-9-A703 renumbered from R18-9-705 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A704. Recycled Water General Permit

A. Type 1 Recycled Water General Permit for Gray Water. A person may use recycled water without notice to the Department if the use:

1. Is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 Recycled Water General Permit under this Article.

B. Type 2 Recycled Water General Permit for Reclaimed Water.

1. A person may use recycled water under a Type 2 Recycled Water General Permit if:
   a. The use is authorized by and meets the requirements of this Article;
   b. The use meets all the conditions of the applicable Type 2 Recycled Water General Permit under this Article;
   c. The person files a Notice of Intent to Use Recycled Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent to Use Recycled Water.
   a. A person shall submit, by mail, in person, or by another method approved by the Department, the Notice of Intent to Use Recycled Water on a form provided by the Department.
   b. The Notice of Intent to Use Recycled Water shall include;
      i. The name, address, e-mail address, and telephone number of the applicant;
      ii. The name, address, and telephone number of the contact person;
      iii. The source, estimated volume, and, if applicable, class of recycled water to be used;
      iv. The latitude and longitude coordinates of the approximate center point of the use site;
      v. The description of the use activity; and
      vi. The applicant's certification that the applicant agrees to comply with all requirements of this Article, including specific terms of the applicable Recycled Water General Permit.
   c. For a Type 2 Recycled Water General Permit for Direct Reuse of Reclaimed Water, the Notice of Intent to Use Recycled Water must include the description of the direct reuse activity, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity.
3. The Department shall notify the applicant that the Department received the Notice of Intent to Use Recycled Water and that the applicant is authorized to use the recycled water according to Type 2 permit conditions.

C. Type 3 Recycled Water General Permit for Reclaimed Water and Type 3 Recycled Water General Permit for Gray Water. A person shall not operate under a Type 3 Recycled Water General Permit until the Department issues a written Recycled Water Authorization.

1. Application submittal. The applicant shall submit, either by mail, in person at the Department, or by another method approved by the Department:
   a. The Notice of Intent to Use Recycled Water on a form provided by the Department containing the information specified in the applicable Type 3 Recycled Water General Permit under this Article, and
   b. The applicable fee established in 18 A.A.C. 14.
2. Issuance of Recycled Water Authorization. If, after reviewing the Notice of Intent to Use Recycled Water, the Department determines the direct reuse conforms with the conditions of a Type 3 Recycled Water General Permit and all other applicable requirements of this Article, the Department shall issue the Recycled Water Authorization.
3. Denial of Recycled Water Authorization.
   a. If the Department determines on the basis of its review or an inspection the use does not conform to the conditions of the applicable Type 3 Recycled Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the Recycled Water Authorization.
   b. The applicant may appeal the decision not to issue a Recycled Water Authorization under A.R.S. §§ 41-1092 through 41-1092.12.

Historical Note
New Section R18-9-A704 renumbered from R18-9-708 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A705. Recycled Water Permit Term, Information Changes, and Renewal

A. A recycled water general permit is valid as follows:
1. A Type 1 Recycled Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required.
2. A Type 2 Recycled Water General Permit is valid for five years from the date the Department receives the Notice of Intent to Use Recycled Water;
3. A Type 3 Recycled Water General Permit is valid for five years from the date the Recycled Water Authorization is issued.

B. If any change in the following information occurs, a permittee operating under any individual, or Type 2 or Type 3 recycled water general permit shall update the Department with such changes at least once annually by January 31:
1. Permittee,
2. Ownership,
3. Contact person,
4. Phone number, address, email address, or telephone number, or any combination of any of the above, for permittee or contact person,
5. Name of the use site,
6. For a Type 2 Recycled Water General Permit for Direct Reuse of Class A + or B + Reclaimed Water remaining under the same ownership:
   a. Expansion of the reuse area,
   b. Addition of another allowable use if it is located within the same property boundary as the boundary identified in the Notice of Intent to Use Recycled Water submitted to the Department.
7. An increase in Class A, B, or C reclaimed water use of more than ten percent but less than twenty percent above the volume of reclaimed water currently permitted for use at the reuse site, if applicable.

C. To renew any Type 2 or Type 3 Recycled Water General Permit, a permittee must submit a Notice of Renewal at least 30 days before the permit expires and include the applicable fee established in 18 A.A.C. 14. A permittee may update or change any information as described in subsection (B) in a Notice of Renewal.

D. For changes not described in subsections (B) or (C), the permittee must submit a new Notice of Intent to Use Recycled Water or a Recycled Water Individual Permit application, as applicable.

Historical Note
New Section R18-9-A705 renumbered from R18-9-709 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A706. Recycled Water Permit Revocation

A. After notice and opportunity for a hearing, the Director may revoke coverage under a Recycled Water General Permit and require the permittee to obtain an individual permit in order to operate for any of the following:
1. The permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2; Article 7 of this Chapter; or any permit condition;
2. The permittee misrepresented or omitted a fact, information, or data related to an application or permit condition;
3. The Director determines a permitted activity is causing or will cause a violation of a water quality standard established under A.R.S. § 49-221;
4. A permitted activity is causing or will cause imminent and substantial endangerment to public health or the environment.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative effect of the facilities subject to the Recycled Water General Permit has violated or will violate a water quality standard established under A.R.S. § 49-221.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit is automatically revoked upon issuance of the individual permit.

D. The Director may, after notice and opportunity for hearing, suspend or revoke a Recycled Water Individual Permit for any of the reasons listed in subsections (A)(1) through (A)(4) of this Section.

Historical Note
New Section R18-9-A706 renumbered from R18-9-710 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A707. Recycled Water Permit Transition

The terms and conditions of Type 2, Type 3, and individual reclaimed water permits issued before January 1, 2018, including permits issued for gray water, shall remain in effect according to the language of this Article effective as of the date the permit was issued.

Historical Note
New Section R18-9-A707 made by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART B. RECLAIMED WATER

R18-9-B701. Transition of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater

A. A person may directly reuse reclaimed water under an individual Aquifer Protection Permit or a Permit for the Reuse of Reclaimed Wastewater issued by the Department before January 1, 2001 if the person meets the conditions of the permit and the permit does not expire.

B. A person meeting the requirements of subsection (A) may apply for a new reclaimed water permit under this Article.
1. To obtain a reclaimed water permit, a person shall submit a Recycled Water Individual Permit application, required under R18-9-A703(A), or a Notice of Intent to Use Recycled Water, required under R18-9-A704(B)(2) or R18-9-A704(B)(3), to the Department at least 120 days before the current permit expires.
2. The Department shall continue the terms of the individual Aquifer Protection Permit or the Permit for the Reuse of Reclaimed Wastewater beyond the stated date of expiration if:
   a. The permitted direct reuse is of a continuing nature; and
   b. The permittee submits a timely and complete application for a new permit.

C. Sewage treatment facility generating reclaimed water.
1. At the request of a permittee holding an individual Aquifer Protection Permit, the Department shall amend an individual Aquifer Protection Permit if the permittee adequately demonstrates that the applicable quality of

reclaimed water produced for direct reuse is achieved. The Department shall review:

a. The information in the individual Aquifer Protection Permit, any applicable supporting documentation, and the water quality test results from the previous two years to determine the classification of reclaimed water generated by the sewage treatment facility; and

b. The available water quality data if the sewage treatment facility has operated for less than two years.

2. The Department shall issue an amended individual Aquifer Protection Permit under procedures specified under 18 A.A.C. 9, Article 2 containing:

a. Identification of the class of reclaimed water generated by the facility;

b. Requirements for monitoring reclaimed water quality and flow at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;

c. Requirements for quarterly reporting of the following data to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:

i. Water quality test results demonstrating reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and

ii. The total volume of reclaimed water generated for direct reuse.

d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

Historical Note

New Section R18-9-B701 renumbered from R18-9-703 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B702. General Requirements for Reclaimed Water

A. Sewage treatment facility. A sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit.

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit.

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall conduct blending operations only as authorized under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility.

D. Reclaimed water agent. A person shall operate as a reclaimed water agent only as authorized under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Agent.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee applying reclaimed water for an irrigation use allowed in 18 A.A.C. 11, Article 3, Table A shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;

2. Prevent reclaimed water from standing on open access areas during normal periods of use; and

3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas.

G. Hose bibbs. A permittee directly reusing reclaimed water shall secure hose bibbs discharging reclaimed water to prevent use by the public.

H. Prohibited activities.

1. Irrigating with untreated sewage;

2. Providing water for human consumption from a reclaimed water source except as allowed in Part E of this Article.

3. Providing or using reclaimed water for any of the following activities:

a. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or

b. Direct reuse for evaporative cooling or misting.

4. Misapplying reclaimed water for any of the following reasons:

a. Application of a stated class of reclaimed water of lesser quality than allowed by this Article for the type of direct reuse application;

b. Application of reclaimed water to any area other than a direct reuse site; or

c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for:

i. agricultural return flow directed onto an adjacent field or returned to an open water conveyance; or

ii. a discharge authorized by an individual or general NPDES or AZPDES permit.

I. Signage and Notification. A permittee shall place and maintain signage at locations and provide applicable notification as specified in Table 1 so the public is informed reclaimed water is in use and no one should drink from the system.

J. Pipeline Conveyances of Reclaimed Water.

1. Applicability. Any person constructing a pipeline conveyance, whether new or a replacement of an existing pipeline, shall meet the requirements of this subsection.

2. A person shall design and construct a pipeline conveyance system using good engineering judgment following standards of practice.

3. A person shall construct a pipeline conveyance so that:

a. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;

b. System structural integrity is maintained; and

c. The capability for inspection, maintenance, and testing is maintained.

4. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in R18-9-E301(D)(2)(j).

5. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

6. The following requirements for minimum separation distance apply. A person shall:

a. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (J)(6)(c);

b. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (J)(6)(c);
c. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (J)(6)(a) and (J)(6)(b) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and
d. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

7. A person shall:
a. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of three feet or less and colored purple or wrapped with durable purple tape.
b. For a mechanical appurtenance to a pipeline conveyance, ensure the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

K. Open Water Conveyances of Reclaimed Water.
1. This subsection applies to an open water conveyance, regardless of the date of construction.
2. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.
3. Signage for Class B+, B, and C Reclaimed Water. A person shall:
a. Ensure signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
b. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance or other interval as approved in writing by the Department; and
c. Ensure signs are visible and legible from both sides of the open water conveyance.

Historical Note
New Section R18-9-B702 renumbered from R18-9-704 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018; clerical error to subsections corrected at (J)(6)(a), (b), and (c) as published at 23 A.A.R. 3091 (Supp. 17-4).

Table 1. Signage and Notification Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+, A	Each bibb at valve	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	On dispersal equipment and visible to the public
B+, B	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. At reasonably spaced intervals of not more than 1/4 mile at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. If applicable, notice on golf score cards	On dispersal equipment and visible to the public
C	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. At reasonably spaced intervals of not more than 1/4 mile at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. If applicable, notice on golf score cards	On dispersal equipment and visible to the public

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

Historical Note

New Section R18-9-B702, Table 1 renumbered from R18-9-704, Table 1 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B703. General Provisions for Recycled Water Individual Permit for Reclaimed Water

A. A Recycled Water Individual Permit for Reclaimed Water is obtained under R18-9-A703. A Recycled Water Individual Permit for Reclaimed Water:
1. Is valid for five years;
2. Must be updated as prescribed by R18-9-A705; and
3. Continues, pending the issuance of a new permit, with the same terms following its expiration if the following are met:
   a. The permittee submits an application for a new permit at least 60 days before the expiration of the existing permit; and
   b. The permitted activity is of a continuing nature.

B. A Recycled Water Individual Permit for Reclaimed Water shall contain, if applicable:
1. The class of reclaimed water to be applied for direct reuse or the alternative water quality criteria appropriate for a direct reuse type not listed in 18 A.A.C. 11, Article 3, Table A that ADEQ may allow under R18-11-309;
2. Specific types of direct reuse and any limitations on reuse;
3. Requirements for monitoring reclaimed water quality and flow to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
4. Requirements for reporting the following data to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3:
   a. Water quality test results demonstrating the reclaimed water meets the applicable standards for the class of water or the alternative water quality criteria identified in subsection (B)(1), and
   b. The total volume of reclaimed water generated for direct reuse.
5. Requirements for maintaining records of all monitoring information and monitoring activities include:
   a. The date, description of sampling location, and time of sampling or measurement;
   b. The name of the person who performed the sampling or measurement;
   c. The date the analyses were performed;
   d. The name of the person who performed the analyses;
   e. The analytical techniques or methods used;
   f. The results of the analyses; and
   g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.
6. Requirements to retain all monitoring activity records and results, including all data for continuous monitoring instrumentation, and calibration and maintenance records for five years from the date of sampling or analysis. The Director shall extend the five-year retention period:
   a. During the course of an unresolved litigation regarding compliance with the permit conditions, or
   b. For any other justifiable cause.
7. A requirement to allow all end users access to the records of physical, chemical, and biological quality of the reclaimed water.
8. Signage or other notification requirements appropriate to the use; and
9. Closure requirements, if applicable.

Historical Note

New Section R18-9-B703 renumbered from R18-9-706 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B704. Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years describing the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity. The records shall be made available to the Department upon request.

C. A permittee shall post signs or provide notification or both as specified in R18-9-B702(I).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

Historical Note

New Section R18-9-B704 renumbered from R18-9-712 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B705. Type 2 Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 Recycled Water General Permit for the Direct Reuse of Class A Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if the conditions in this Article are met.

B. Records and reporting. A permittee shall:
1. Maintain records containing the following information for five years, and make them available to the Department upon request:
   a. The direct reuse site,
   b. The volume of reclaimed water applied monthly for each category of direct reuse activity listed in 18 A.A.C. 11, Article 3, Table A,
   c. The total nitrogen concentration of the reclaimed water applied, and
   d. The acreage and type of vegetation to which the reclaimed water is applied.
2. Report annually to the Department on or before the anniversary date of the Notice of Intent to Use Recycled Water:
   a. The volume of reclaimed water received,
   b. The type of reclaimed water application, and
   c. If used for irrigation, the vegetation and acreage irrigated.

C. Nitrogen management. A permittee shall ensure:
1. Impoundments storing reclaimed water allowed by the general permit are lined using a low-hydraulic conductivity artificial or site-specific liner material achieving a calculated discharge rate less than 550 gallons per acre per day; and
2. The application rates of the reclaimed water are based on one of the following:
   a. If assigned, the water allotment specified by the Arizona Department of Water Resources;
   b. A water balance that considers consumptive use of water by the crop, turf, or landscape vegetation; or

c. An alternative method approved by the Department.

D. In addition to the Notice of Intent to Use Recycled Water specified in R18-9-A704(B)(2), the applicant shall provide a list of impoundments, water depth, freeboard, and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs or provide notification, or both, as specified in R18-9-B702(I).

Historical Note
New Section R18-9-B705 renumbered from R18-9-713 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B706. Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water allows any direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if the conditions in this Article are met.

B. A permittee shall comply with the record maintenance and posting requirements established under R18-9-B704 and make records available to the Department upon request.

C. No lining is required for an impoundment storing Class B+ reclaimed water.

Historical Note
New Section R18-9-B706 renumbered from R18-9-714 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B707. Type 2 Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 Recycled Water General Permit for the Direct Reuse of Class B Reclaimed Water allows the direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-B705(B), (C), (D), and (E).

Historical Note
New Section R18-9-B707 renumbered from R18-9-715 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B708. Type 2 Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 Recycled Water General Permit for the Direct Reuse of Class C Reclaimed Water allows the direct reuse application of Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-B705(B), (C), (D), and (E).

Historical Note
New Section R18-9-B708 renumbered from R18-9-716 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B709. Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.
1. A Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, if the conditions in this Article are met.
2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

B. A person shall file with the Department a Notice of Intent to Operate a reclaimed water blending facility on a form provided by the Department. The Notice of Intent to Operate shall include:
1. The name, address, e-mail address, and telephone number of the applicant;
2. The name, address, e-mail address, and telephone number of a contact person;
3. The source and volume of reclaimed water to be blended;
4. The class of reclaimed water to be blended;
5. The source, volume, and quality of other water to be blended;
6. The latitude and longitude coordinates of the blending facility;
7. A description of the reclaimed water blending facility, including a demonstration the proposed blending methodology will meet the standards established in 18 A.A.C. 11, Article 3 for the class of reclaimed water the facility will produce;
8. The applicant's certification that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this recycled water general permit; and
9. The applicable permit fee specified under 18 A.A.C. 14.

C. A person shall not operate a reclaimed water blending facility until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

D. A permittee shall monitor:
1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.
   a. If the concentration in the blended water of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the applicable reclaimed water class established in 18 A.A.C. 11, Article 3, within 30 days of the exceedance, the permittee shall submit a plan to the Department to change the blending process or to otherwise correct the deficiency. The permittee shall also double the monitoring frequency for the next four months.
   b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a Recycled Water Individual Permit for Reclaimed Water.
2. The volume of reclaimed water, the volume of the other water, and the total volume of blended water delivered for direct reuse on a monthly basis.

E. The permittee shall report the results of the monitoring under subsection (D) to the Department by January 31, for the immediately preceding calendar year, and shall make this information available to the end users.

Historical Note
New Section R18-9-B709 renumbered from R18-9-717 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B710. Type 3 Recycled Water General Permit for a Reclaimed Water Agent

A. A Type 3 Recycled Water General Permit for a Reclaimed Water Agent allows a person to operate as a Reclaimed Water Agent if the conditions of this Article are met, and the follow-

ing conditions are met for the class of reclaimed water delivered by the Reclaimed Water Agent:

1. Signage and notification requirements specified under R18-9-B702(I), as applicable;
2. Impoundment liner requirements specified under R18-9-B704(D), R18-9-B705(C), R18-9-B706(C), R18-9-B707(B) or R18-9-B708(B), as applicable; and
3. Nitrogen management requirements specified under R18-9-B705(C), R18-9-B707(B), and R18-9-B708(B), as applicable.

B. A person holding a Type 3 Recycled Water Permit for a Reclaimed Water Agent:

1. Is responsible for the direct reuse of reclaimed water by more than one end user instead of direct reuse by the end users under separate Type 2 Recycled Water General Permits, and
2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

C. A person shall file with the Department a Notice of Intent to Operate as a reclaimed water agent. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;
2. The name, address, e-mail address, and telephone number of a contact person;
3. The following information for each end user to be supplied reclaimed water by the applicant:
   a. The name, address, e-mail address, and telephone number of the end user;
   b. A system map showing the locations of the direct reuse sites and the latitude and longitude coordinates of each site; and
   c. A description of each direct reuse activity, including the type of vegetation, acreage, and annual volume of reclaimed water to be used, unless Class A+ or Class B+ reclaimed water is delivered.
4. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
5. A description of the contractual arrangement between the applicant and each end user, including any end user responsibilities for the requirements specified under subsection (A); and
6. The applicable permit fee specified under 18 A.A.C. 14.

D. A proposed reclaimed water agent shall not distribute reclaimed water to end users until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

E. A reclaimed water agent shall record and annually report the following information to the Department by January 31, for the immediately preceding year:

1. The total volume of reclaimed water delivered by the reclaimed water agent;
2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and
3. Any change in the information submitted under subsection (C).

Historical Note

New Section R18-9-B710 renumbered from R18-9-718 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART C. RECYCLED INDUSTRIAL WASTEWATER

R18-9-C701. Recycled Water Individual Permit for Industrial Wastewater That Is Reused

A. The following activities are prohibited unless a Recycled Water Individual Permit is obtained under R18-9-A703:

1. Use of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or water from an industrial wastewater treatment facility.
2. Use of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

B. In addition to the requirements in R18-9-A703(A), an application for a Recycled Water Individual Permit shall include:

1. Each source of the industrial wastewater with Standard Industrial Code or North American Industry Classification System Code, and the projected rates and volumes from each source;
2. The chemical, biological, and physical characteristics of the industrial wastewater from each source; and
3. If reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

Historical Note

New Section R18-9-C701 renumbered from R18-9-707 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART D. GRAY WATER

R18-9-D701. Type 1 Recycled Water General Permit for Gray Water

A. A Type 1 Recycled Water General Permit for Gray Water allows private residential use of gray water for a flow of less than 400 gallons per day if all the following conditions are met:

1. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, or landscape watering;
2. Human contact with gray water and soil watered by gray water is avoided;
3. Surface application of gray water is not used for watering of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;
4. The gray water does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from hobbyist or home occupational activities;
5. The gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
6. The application of gray water is managed to minimize standing water on the surface by using measures such as avoiding overwatering, distributing the gray water beneath a mulch or other cover, and using best practices to improve soil condition and increase filtration;
7. If blockage, backup, or overload of the system occurs, gray water distribution shall cease until the deficiency is corrected. The gray water system may include components to reduce blockage and backup and be operated using best practices to extend system lifetime;
8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from

the point of gray water application to the top of the seasonally high groundwater table;

11. For a residence using an on-site wastewater treatment facility for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility at the residence, and ensures the facility can handle the combined black water and gray water flow;
12. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water; and
13. Surface application of gray water is only by flood or drip distribution methods. Flood distribution methods may include containment by horticultural mulch basins and swales.

B. Prohibitions. The following are prohibited:

1. Gray water use for purposes other than watering and composting, and
2. Application of gray water by a spray method.

Historical Note
New Section R18-9-D701 renumbered from R18-9-711 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-D702. Type 3 Recycled Water General Permit for Gray Water

A. A Type 3 Recycled Water General Permit for Gray Water allows for the use of gray water for landscape irrigation and composting if:

1. The general permit described in R18-9-D701 does not apply,
2. The flow is not more than 3000 gallons per day, and
3. The gray water system satisfies the notification, design, and installation requirements specified in subsections (B) and (C).

B. A person shall file a Notice of Intent to Operate a Gray Water System with the Department on a form provided by the Department. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;
2. The latitude and longitude coordinates;
3. A description of the sources of gray water and calculations demonstrating the flow is not more than 3000 gallons per day;
4. Design plans for the gray water system;
5. The applicant's certification that the applicant agrees to comply with the requirements of this Article and the terms of this Recycled Water General Permit for Gray Water; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following requirements apply to the design, installation, and operation of a gray water system allowed under this Recycled Water General Permit for Gray Water:

1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water is not applied to an exposed surface but into a bed or trench of permeable material, through piping installed below the soil surface, or by similar means. Spray irrigation of gray water is not allowed. The application of gray water shall not result in standing water on the surface.
3. The design shall ensure gray water is used and contained within the property boundary for landscape irrigation or composting;
4. Gray water is not used for irrigation of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;
5. The gray water may contain water from drinking fountains but does not contain hazardous chemicals derived from industrial, hobbyist, or similar activities at the site;
6. Gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
7. The gray water system is constructed so if blockage, plugging, or backup of the system occurs, gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable;
8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from the point of gray water application to the top of the seasonally high groundwater table;
11. If an on-site wastewater treatment facility is used for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility so the facility may handle the combined black water and gray water flow; and
12. Any piping used in a gray water system susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water.

D. The applicant shall not operate the gray water system until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

E. The Department may issue a Recycled Water Authorization that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

F. In the Recycled Water Authorization, the Department may require a permittee to report data or information for any of the conditions in this Section if the Department deems the reporting necessary to protect human health or water quality or both.

Historical Note
New Section R18-9-D702 renumbered from R18-9-719 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART E. PURIFIED WATER FOR POTABLE USE

R18-9-E701. Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility

A. An application for a Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility must be submitted to the Department according to the requirements in R18-9-A703, as applicable.

B. Safe Drinking Water Act. For purposes of Safe Drinking Water Act requirements, water produced by an Advanced Reclaimed Water Treatment Facility shall be considered surface water for purposes of compliance with Title 18, Chapter 4 of the Arizona Administrative Code. Nothing in this Section exempts an applicable facility from Safe Drinking Water Act requirements.

C. Design Report. In addition to the information required by subsection (A), the applicant shall submit a design report for the Advanced Reclaimed Water Treatment Facility according to a form prescribed by the Department and certified by an Arizona-registered professional engineer. The design report must include the following information:

1. Characterization of source water quantity and quality, including:
   a. Average and anticipated minimum and maximum source water flows to the facility;
   b. Concentrations of the source water's physical, microbiological, and chemical constituents regulated for drinking water Maximum Contaminant Levels under the Safe Drinking Water Act and which the Department determines are appropriate for the particular facility and source water;
   c. Description and concentrations of constituents in the source water used for unit treatment process monitoring and assessment of unit treatment process efficacy, and
   d. A list of unregulated microbial and chemical constituents and corresponding concentrations in the source water a facility proposes to monitor in order to assess the treatment effectiveness of the overall treatment train. The particular constituents will depend on consideration of factors, such as:
      i. Occurrence of the constituent in source and local waters,
      ii. Availability of standardized laboratory methods for quantification of the constituent,
      iii. Usefulness as representatives of or surrogates for larger classes of constituents, and
      iv. Availability of toxicity data for the constituent.
2. Description of, and results from, the pilot water treatment system for the facility or of analogous systems where comparable treatment components are demonstrated as appropriate for treating the particular characteristics of the applicant's proposed source water;
3. Identification and description of the technologies, processes, methodologies, and process control monitoring to be employed for microbial control;
4. Logarithmic reduction targets for microbial control, to ensure the product water is free of pathogens and suitable for potable use;
5. Identification and description of technologies, processes, methodologies and process control monitoring for chemical control;
6. Plan for monitoring the product water for public health protection;
7. Commissioning and startup plan, including preoperational and startup testing and monitoring, expected timeframe for meeting full operational performance, and any other special startup condition meriting consideration in the individual permit;
8. Operation and maintenance plan including corrective actions for out-of-range monitoring results and contingencies for non-compliant water;
9. Operator training plan; and
10. Documentation of technical, financial, and management capability.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

ARTICLE 8. REPEALED

R18-9-801. Repealed

Historical Note

Corrected A.R.S. reference (Supp. 77-3). Former Section R9-8-311 renumbered without change as Section R18-9-801 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-802. Repealed

Historical Note

Amended by adding subsections (N) through (R) effective June 8, 1981 (Supp. 81-3). Former Section R9-8-312 renumbered without change as Section R18-9-802 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-803. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Amended by adding subsection (E) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-313 renumbered without change as Section R18-9-803 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-804. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsections (I) and (J) effective June 8, 1981 (Supp. 81-3). Amended subsections (A), (F) and (H) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-314 renumbered without change as Section R18-9-804 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-805. Repealed

Historical Note

Adopted effective April 18, 1979 (Supp. 79-2). Amended effective October 2, 1986 (Supp. 86-5). Former Section R9-8-315 renumbered without change as Section R18-9-805 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-806. Repealed

Historical Note

Adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-317 renumbered without change as Section R18-9-806 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-807. Repealed

Historical Note

Former Section R9-8-321 renumbered without change as Section R18-9-807 (Supp. 87-3). Section repealed by

final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-808. Repealed

Historical Note

Former Section R9-8-323 renumbered without change as Section R18-9-808 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-809. Repealed

Historical Note

Former Section R9-8-324 renumbered without change as Section R18-9-809 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-810. Repealed

Historical Note

Former Section R9-8-325 renumbered without change as Section R18-9-810 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-811. Repealed

Historical Note

Former Section R9-8-326 repealed, new Section R9-8-326 adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-326 renumbered without change as Section R18-9-811 (Supp. 87-3). First entry in Historical Note corrected to reflect Section numbers at time of rule repeal and adoption by changing R18-9-326 to R9-8-326 (Supp. 96-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-812. Repealed

Historical Note

Former Section R9-8-327 renumbered without change as Section R18-9-812 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-813. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Former Section R9-8-329 renumbered without change as Section R18-9-813 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-814. Repealed

Historical Note

Former Section R9-8-331 renumbered without change as Section R18-9-814 (Supp. 87-3). Amended effective October 19, 1989 (Supp. 89-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-815. Repealed

Historical Note

Former Section R9-8-332 renumbered without change as Section R18-9-815 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-816. Repealed

Historical Note

Former Section R9-8-351 renumbered without change as Section R18-9-816 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-817. Repealed

Historical Note

Former Section R9-8-352 renumbered without change as Section R18-9-817 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-818. Repealed

Historical Note

Former Section R9-8-353 renumbered without change as Section R18-9-818 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-819. Repealed

Historical Note

Former Section R9-8-361 renumbered without change as Section R18-9-819 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS

R18-9-A901. Definitions

In addition to the definitions in A.R.S. § 49-201 and 49-255, the following terms apply to this Article:

1. "Animal confinement area" means any part of an animal feeding operation where animals are restricted or confined including open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables.
2. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
   a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
   b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

3. "Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, "designated project area" means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.
4. "Border area" means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. "CAFO" means any large concentrated animal feeding operation, medium concentrated animal feeding operation, or animal feeding operation designated under R18-9-D901.
7. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
    a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the Salmonidae family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
        i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
        ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
    b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the Ameiuride, Centrarchidae, and Cyprinidae families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
        i. A closed pond that discharges only during periods of excess runoff; or
        ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
9. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
    a. The term includes the addition of any pollutant into a navigable water from:
        i. A treatment works treating domestic sewage;
        ii. Surface runoff that is collected or channeled by man;
        iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
        iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
    b. The term does not include an addition of a pollutant by any industrial user as defined in A.R.S. § 49-255(4).
10. "Draft permit" means a document indicating the Director's tentative decision to issue, deny, modify, revoke and reissue, terminate, or reissue a permit.
    a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
    b. A notice of intent to deny a permit is a type of draft permit.
    c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
11. "EPA" means the U.S. Environmental Protection Agency.
12. "General permit" means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
13. "Individual permit" means an AZPDES permit for a single point source, a single facility, or a municipal separate storm sewer system.
14. "Land application area," for purposes of Article 9, Part D, means land under the control of an animal feeding operation owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.
15. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at least the number of animals specified in any of the following categories:
    a. 700 mature dairy cows, whether milked or dry;
    b. 1,000 veal calves;
    c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
    d. 2,500 swine each weighing 55 pounds or more;
    e. 10,000 swine each weighing less than 55 pounds;
    f. 500 horses;
    g. 10,000 sheep or lambs;
    h. 55,000 turkeys;
    i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
    j. 125,000 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
    k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
    l. 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
    m. 5,000 ducks, if the animal feeding operation uses a liquid manure handling system.
16. "Large municipal separate storm sewer system" means a municipal separate storm sewer that is either:

a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
c. Owned or operated by a municipality other than those described in subsections (16)(a) and (16)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.

17. "Manure" means any waste or material mixed with waste from an animal including manure, bedding, compost and raw materials, or other materials commingled with manure or set aside for disposal.
18. "Manure storage area" means any part of an animal feeding operation where manure is stored or retained including lagoons, run-off ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles.
19. "Medium concentrated animal feeding operation" means an animal feeding operation in which:
    a. The type and number of animals that it stables or confines falls within any of the following ranges:
        i. 200 to 699 mature dairy cows, whether milked or dry;
        ii. 300 to 999 veal calves;
        iii. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
        iv. 750 to 2,499 swine each weighing 55 pounds or more;
        v. 3,000 to 9,999 swine each weighing less than 55 pounds;
        vi. 150 to 499 horses;
        vii. 3,000 to 9,999 sheep or lambs;
        viii. 16,500 to 54,999 turkeys;
        ix. 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
        x. 37,500 to 124,999 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
        xi. 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
        xii. 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
        xiii. 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; and
    b. Either one of the following conditions are met:
        i. Pollutants are discharged into a navigable water through a man-made ditch, flushing system, or other similar man-made device; or
        ii. Pollutants are discharged directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.
20. "Medium municipal separate storm sewer system" means a municipal separate storm sewer that is either:
    a. Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
    b. Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
    c. Owned or operated by a municipality other than those described in subsections (20)(a) and (20)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
21. "MS4" means municipal separate storm sewer system.
22. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
    a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
    b. Designed or used for collecting or conveying stormwater;
    c. That is not a combined sewer; and
    d. That is not part of a POTW.
23. "Municipal separate storm sewer system" means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through (iv).
24. "New discharger" includes an industrial user and means any building, structure, facility, or installation:
    a. From which there is or may be a discharge of pollutants;
    b. That did not commence the discharge of pollutants at a particular site before August 13, 1979;
    c. That is not a new source; and
    d. That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
25. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    a. After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
    b. After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.
26. "NPDES" means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring,

and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.

27. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
    a. Sewage from vessels; or
    b. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)
28. "POTW" means a publicly owned treatment works.
29. "Process wastewater," for purposes of Article 9, Part D, means any water that comes into contact with a raw material, product, or byproduct including manure, litter, feed, milk, eggs, or bedding and water directly or indirectly used in the operation of an animal feeding operation for any or all of the following:
    a. Spillage or overflow from animal or poultry watering systems;
    b. Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities;
    c. Direct contact swimming, washing, or spray cooling of animals; or
    d. Dust control.
30. "Proposed permit" means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
31. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
32. "Production area," for purposes of Article 9, Part D, means the animal confinement area, manure storage area, raw materials storage area, and waste containment areas. Production area includes any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of animal mortalities.
33. "Raw materials storage area" means the part of an animal feeding operation where raw materials are stored including feed silos, silage bunkers, and bedding materials.
34. "Silviculture point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
    a. "Log sorting and log storage facilities" means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
    b. "Rock crushing and gravel washing facilities" mean facilities that process crushed and broken stone, gravel, and riprap.
35. "Small municipal separate storm sewer system" means a separate storm sewer that is:
    a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
    b. Not defined as a "large" or "medium" municipal separate storm sewer system or designated under R18-9-A902(D)(2).
    c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
36. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.
37. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.
38. "Waste containment area" means any part of an animal feeding operation where waste is stored or contained including settling basins and areas within berms and diversions that separate uncontaminated stormwater.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program,

including an expired permit that EPA has continued in effect under 40 CFR 122.6.

1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
   a. The effective date of EPA approval of the AZPDES program;
   b. The name and address of the Department;
   c. The name of each individual permitted facility and its permit number;
   d. The title of each general permit administered by the Department;
   e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
   f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and
   g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
2. The Department shall provide the following entities with a copy of the notice:
   a. Each county department of health, environmental services, or comparable department;
   b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
   c. Any person who requested, in writing, notification of the activity;
   d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
   e. The United States Section of the International Boundary and Water Commission.
3. If a timely application for a NPDES permit is submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
4. The terms and conditions under which the permit was issued remain the same until the permit is modified.

B. Article 9 of this Chapter applies to any "discharge of a pollutant." Examples of categories that result in a "discharge of a pollutant" and may require an AZPDES permit include:

1. CAFOs;
2. Concentrated aquatic animal production facilities;
3. Case-by-case designation of concentrated aquatic animal production facilities;
   a. The Director may designate any warm- or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to navigable waters. The Director shall consider the following factors when making this determination:
      i. The location and quality of the receiving waters of the United States;
      ii. The holding, feeding, and production capacities of the facility;
      iii. The quantity and nature of the pollutants reaching navigable waters; and
      iv. Any other relevant factor;
   b. A permit application is not required from a concentrated aquatic animal production facility designated under subsection (B)(3)(a) until the Director conducts an onsite inspection of the facility and determines that the facility should and could be regulated under the AZPDES permit program;
4. Aquaculture projects;
5. Manufacturing, commercial, mining, and silviculture point sources;
6. POTWs;
7. New sources and new dischargers;
8. Stormwater discharges:
   a. Associated with industrial activity as defined under 40 CFR 122.26(b)(14), incorporated by reference in R18-9-A905(A)(1)(d). The Department shall not consider a discharge to be a discharge associated with industrial activity if the discharge is composed entirely of stormwater and meets the conditions of no exposure as defined under 40 CFR 122.26(g), incorporated by reference in R18-9-A905(A)(1)(d);
   b. From a large, medium, or small MS4;
   c. From a construction activity, including clearing, grading, and excavation, that results in the disturbance of:
      i. Equal to or greater than one acre or;
      ii. Less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; but
      iii. Not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility;
   d. Any discharge that the Director determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to a navigable water, which may include a discharge from a conveyance or system of conveyances (including roads with drainage systems and municipal streets) used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers.

C. Articles 9 and 10 of this Chapter apply to the following biosolids categories and may require an AZPDES permit:

1. Treatment works treating domestic sewage that would not otherwise require an AZPDES permit; and
2. Using, applying, generating, marketing, transporting, and disposing of biosolids.

D. Director designation of MS4s.

1. The Director may designate and require any small MS4 located outside of an urbanized area to obtain an AZPDES stormwater permit. The Director shall base this designation on whether a stormwater discharge results in or has the potential to result in an exceedance of a water quality standard, including impairment of a designated use, or another significant water quality impact, including a habitat or biological impact.
   a. When deciding whether to designate a small MS4, the Director shall consider the following criteria:
      i. Discharges to sensitive waters,
      ii. Areas with high growth or growth potential,
      iii. Areas with a high population density,
      iv. Areas that are contiguous to an urbanized area,

v. Small MS4s that cause a significant contribution of pollutants to a navigable water,
vi. Small MS4s that do not have effective programs to protect water quality, and
vii. Any other relevant criteria.

b. The same requirements for small MS4s designated under 40 CFR 122.32(a)(1) apply to permits for designated MS4s not waived under R18-9-B901(A)(3).

2. The Director may designate an MS4 as part of a large or medium system due to the interrelationship between the discharges from a designated storm sewer and the discharges from a municipal separate storm sewer described under R18-9-A901(16)(a) and (b), or R18-9-A901(20)(a) or (b), as applicable. In making this determination, the Director shall consider the following factors:
   a. Physical interconnections between the municipal separate storm sewers;
   b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R18-9-A901(16)(a) and R18-9-A901(20)(a);
   c. The quantity and nature of pollutants discharged to a navigable water;
   d. The nature of the receiving waters; and
   e. Any other relevant factor.
3. The Director shall designate a small MS4 that is physically interconnected with a MS4 that is regulated by the AZPDES program if the small MS4 substantially contributes to the pollutant loading of the regulated MS4.

E. Petitions. The Director may, upon a petition, designate as a large, medium or small MS4, a municipal separate storm sewer located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R18-9-A901(16), R18-9-A901(20) or R18-9-A901(35), as applicable.

F. Phase-ins.
1. The Director may phase-in permit coverage for a small MS4 serving a jurisdiction with a population of less than 10,000 if a phasing schedule is developed and implemented for approximately 20 percent annually of all small MS4s that qualify for the phased-in coverage.
   a. If the phasing schedule is not yet approved for permit coverage, the Director shall, by December 9, 2002, determine whether to issue an AZPDES permit or allow a waiver under R18-9-B901(A)(3) for each eligible MS4.
   b. All regulated MS4s shall have coverage under an AZPDES permit no later than March 8, 2007.
2. The Director may provide a waiver under R18-9-B901(A)(3) for any municipal separate storm sewage system operating under a phase-in plan.

G. Exclusions. The following discharges do not require an AZPDES permit:
1. Discharge of dredged or fill material into a navigable water that is regulated under section 404 of the Clean Water Act (33 U.S.C. 1344);
2. The introduction of sewage, industrial wastes, or other pollutants into POTWs by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with a permit until all discharges of pollutants to a navigable water are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through a pipe, sewer, or other conveyance owned by the state, a municipality, or other party not leading to treatment works;
3. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR 300, The National Oil and Hazardous Substances Pollution Contingency Plan; or 33 CFR 153.10(e), Control of Pollution by Oil and Hazardous Substances, Discharge Removal;
4. Any introduction of pollutants from a nonpoint source agricultural or silvicultural activity, including stormwater runoff from an orchard, cultivated crop, pasture, rangeland, and forest land, but not discharges from a concentrated animal feeding operation, concentrated aquatic animal production facility, silvicultural point source, or to an aquaculture project;
5. Return flows from irrigated agriculture;
6. Discharges into a privately owned treatment works, except as the Director requires under 40 CFR 122.44(m), which is incorporated by reference in R18-9-A905(A)(3)(d);
7. Discharges from conveyances for stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of the operations.

H. Conditional no exposure exclusion.
1. Discharges composed entirely of stormwater are not considered stormwater discharges associated with an industrial activity if there is no exposure, and the discharger satisfies the conditions under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d).
2. For purposes of this subsection:
   a. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.
   b. "Industrial materials or activities" include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.
   c. "Material-handling activities" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

Historical Note

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). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

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.

Historical Note

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). Amended by final rulemaking at 29 A.A.R. 296 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-9-A904. Effect of a Permit

A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A905. AZPDES Program Standards

A. Except for subsection (A)(11), the following 40 CFR sections and appendices, amended as of April 15, 2023, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department:

1. General program requirements.
   a. 40 CFR 122.7;
   b. 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l);
   c. 40 CFR 122.22;
   d. 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2);
   e. 40 CFR 122.29;
   f. 40 CFR 122.32;
   g. 40 CFR 122.33;
   h. 40 CFR 122.34;
   i. 40 CFR 122.35;
   j. 40 CFR 122.62(a) and (b).
2. Procedures for Decision making.
   a. 40 CFR 124.8, except 40 CFR 124.8(b)(3); and
   b. 40 CFR 124.56.
3. Permit requirements and conditions.
   a. 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3);
   b. 40 CFR 122.42;
   c. 40 CFR 122.43;
   d. 40 CFR 122.44;
   e. 40 CFR 122.45;
   f. 40 CFR 122.47;
   g. 40 CFR 122.48; and
   h. 40 CFR 122.50.
4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, H, and I.
5. Toxic pollutant effluent standards. 40 CFR 129.
6. Secondary treatment regulation. 40 CFR 133.
7. Guidelines for establishing test procedures for the analysis of pollutants, 40 CFR 136.
8. Effluent guidelines and standards.
   a. General provisions, 40 CFR 401; and
   b. General pretreatment regulations for existing and new sources of pollution, 40 CFR 403 and Appendices A, D, E, and G.
9. Effluent limitations guidelines. 40 CFR 405 through 40 CFR 471.
10. Standards for the use or disposal of sewage sludge. 40 CFR 503, Subpart C.
11. The following substitutions apply to the material in subsections (A)(1) through (A)(10):
    a. Substitute the term AZPDES for any reference to NPDES;
    b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
    c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
    d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;

e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
h. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
i. Substitute R18-9-1010 for any reference to 40 CFR 503.33.

B. A person shall analyze a pollutant using a test procedure for the pollutant specified by the Director in an AZPDES permit. If the Director does not specify a test procedure for a pollutant in an AZPDES permit, a person shall analyze the pollutant using:
1. A test procedure listed in 40 CFR 136, which is incorporated by reference in subsection (A)(7);
2. An alternate test procedure approved by the EPA as provided in 40 CFR 136;
3. A test procedure listed in 40 CFR 136, with modifications allowed by the EPA and approved as a method alteration by the Arizona Department of Health Services under A.A.C. R9-14-610(B); or
4. If a test procedure for a pollutant is not available under subsection (B)(1) through (B)(3), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610(C).

Historical Note

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). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

A. The reduction or alteration of a pollutant may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited under 40 CFR 403.6(d), which is incorporated by reference in R18-9-A905(A)(8)(b). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit calculated under 40 CFR 403.6(e), which is incorporated by reference in R18-9-A905(A)(8)(b).

B. Pretreatment applies to:
1. Pollutants from non-domestic sources covered by pretreatment standards that are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;
2. POTWs that receive wastewater from sources subject to national pretreatment standards; and
3. Any new or existing source subject to national pretreatment standards.

C. National pretreatment standards do not apply to sources that discharge to a sewer that is not connected to a POTW.

D. For purposes of this Section the terms "National Pretreatment Standard" and "Pretreatment Standard" mean any regulation containing pollutant discharge limits promulgated by EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C. 1317), which applies to Industrial Users. This term includes prohibitive discharge limits established under 40 CFR 403.5.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A907. Public Notice

A. Individual permits.
1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
   a. The name and address of the Department;
   b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
   c. A brief description of the business conducted at the facility or activity described in the permit application;
   d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
   e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
   f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
   g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
   h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
   i. Any additional information considered necessary to the permit decision.
2. The Department shall provide the applicant with a copy of the draft individual permit.
3. Copy of the notice. The Department shall provide the following entities with a copy of the notice:
   a. The applicant or permittee;
   b. Any user identified in the permit application of a privately owned treatment works;
   c. Any affected federal, state, tribal, or local agency, or council of government;
   d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona

Historic Preservation Office, and the U.S. Army Corps of Engineers;
e. Each applicable county department of health, environmental services, or comparable department;
f. Any person who requested, in writing, notification of the activity; and
g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9-C901, the Director shall publish a general notice of the draft permit in the *Arizona Administrative Register*. The notice shall contain:
1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A908. Public Participation, EPA Review, EPA Hearing

A. Public comment period.
1. The Director shall accept written comments from any interested person before a decision is made on any notice published under R18-9-A907(A) or (B).
2. The public comment period begins on the publication date of the notice and extends for 30 calendar days.
3. The Director may extend the comment period to provide commenters a reasonable opportunity to participate in the decision-making process.
4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.
   a. Corps of Engineers.
      i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.
      ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial of a permit or conditions specified by the District Engineer.
      iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.
   b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.

B. Public hearing.
1. The Director shall provide notice and conduct a public hearing to address a draft permit or denial regarding a final decision if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information have been brought to the attention of the Director during the comment period that was not considered previously in the permitting process.
2. If, after publication of the notice under R18-9-A907, the Director determines that a public hearing is necessary, the Director shall schedule a public hearing and publish notice of the public hearing at least once, in one or more newspapers of general circulation where the facility is located. The notice for public hearing shall contain:
   a. The date, time, and place of the hearing;
   b. Reference to the date of a previous public notice relating to the proposed decision, if any; and
   c. A brief description of the nature and purpose of the hearing, including reference to the applicable laws and rules.
3. The Department shall accept written public comment until the close of the hearing or until a later date specified by the person presiding at the public hearing.

C. EPA review of draft and proposed permits.
1. Individual permits.
   a. The Department shall send a copy of the draft permit to EPA.
   b. If EPA objects to the draft permit within 30 days from the date of receipt of the draft permit, the EPA comment period is extended to 90 days from the date of receipt of the draft permit and the substantive review time-frame is suspended until EPA makes a final determination.
   c. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 30 days from the date of receipt of the proposed permit, the EPA comment period is extended to 90 days from the date of receipt of the proposed permit and the substantive review time-frame is suspended until EPA makes a final determination.
   d. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.
2. General permits. The Director shall send a copy of the draft permit to EPA and comply with the following review procedure for EPA comments:

a. If EPA objects to the draft permit within 90 days from receipt of the draft permit, the Department shall not issue the permit until the objection is resolved;
b. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 90 days from receipt of the proposed permit, the Department shall not issue the permit until the objection is resolved;
c. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.

D. EPA hearing. Within 90 days of receipt by the Director of a specific objection by EPA, the Director or any interested person may request that EPA hold a public hearing on the objection.
1. If following the public hearing EPA withdraws the objection, the Director shall issue the permit.
2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification of the EPA objection, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
4. If EPA issues the permit instead of the Director, the Department shall close the application file.

E. Final permit determination.
1. Individual permits. At the same time the Department notifies a permittee or an applicant of the final individual permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final individual permit determination. The Department shall:
a. Specify the provisions, if any, of the draft individual permit that have been changed in the final individual permit determination, and the reasons for the change; and
b. Briefly describe and respond to all significant comments on the draft individual permit or the permit application raised during the public comment period, or during any hearing.
2. General permits. The Director shall publish a general notice of the final permit determination in the *Arizona Administrative Register*. The notice shall:
a. Specify the provisions, if any, of the draft general permit that have been changed in the final general permit determination, and the reasons for the change;
b. Briefly describe and respond to all significant comments on the draft general permit raised during the public comment period, or during any hearing; and
c. Specify where a copy of the final general permit may be obtained.
3. The Department shall make the response to comments available to the public.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A909. Petitions

A. Any person may submit a petition to the Director requesting:
1. The issuance of a general permit;
2. An individual permit covering any discharge into an MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or
3. An individual permit under R18-9-C902(B)(1).

B. The petition shall contain:
1. The name, address, and telephone number of the petitioner;
2. The location of the facility;
3. The exact nature of the petition, and
4. Evidence of the validity of the petition.

C. The Department shall provide the permittee with a copy of the petition.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

A. Time to apply.
1. Any person who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:
a. Is exempt under R18-9-A902(G);
b. Is covered by a general permit under Article 9, Part C of this Chapter; or
c. Is a user of a privately owned treatment works, unless the Director requires a permit under 40 CFR 122.44(m).
2. Construction. Any person who proposes a construction activity under R18-9-A902(B)(9)(c) or R18-9-A902(B)(9)(d) and wishes coverage under an individual permit, shall apply for the individual permit at least 90 days before the date on which construction is to commence.
3. Waivers.
a. Unless the Director grants a waiver under 40 CFR 122.32, a person operating a small MS4 is regulated under the AZPDES program.
b. The Director shall review any waiver granted under subsection (A)(3)(a) at least every five years to determine whether any of the information required for granting the waiver has changed.

B. Application. An individual permit applicant shall submit the following information on an application obtained from the Department. The Director may require more than one application from a facility depending on the number and types of discharges or outfalls.
1. Discharges, other than stormwater.
a. The information required under 40 CFR 122.21(f) through (k);
b. The signature of the certifying official required under 40 CFR 122.22;

c. The name and telephone number of the operator, if the operator is not the applicant; and
d. Whether the facility is located in the border area, and, if so:
i. A description of the area into which the effluent discharges from the facility may flow, and
ii. A statement explaining whether the effluent discharged is expected to cross the Arizona-Sonora, Mexico border.

2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):
a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);
b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);
c. For small MS4s:
i. A stormwater management program under 40 CFR 122.34, and
ii. The application requirements under 40 CFR 122.33.

C. Consolidation of permit applications.
1. The Director may consolidate two or more permit applications for any facility or activity that requires a permit under Articles 9 and 10 of this Chapter.
2. Whenever a facility or activity requires an additional permit under Articles 9 and 10 of this Chapter, the Director may coordinate the expiration date of the new permit with the expiration date of an existing permit so that all permits expire simultaneously. The Department may then consolidate the processing of the subsequent applications for renewal permits.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-B902. Requested Coverage Under a General Permit
An owner or operator may request that an individual permit be revoked, if a source is excluded from a general permit solely because it already has an individual permit.
1. The Director shall grant the request for revocation of an individual permit upon determining that the permittee otherwise qualifies for coverage under a general permit.
2. Upon revocation of the individual permit, the general permit applies to the source.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B903. Individual Permit Issuance or Denial
A. Once the application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
B. Permit issuance. If, based upon the information obtained by or available to the Department under R18-9-A907, R18-9-A908, and R18-9-B901, the Director determines that an applicant complies with A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, the Director shall issue a permit that is effective as prescribed in A.R.S. 49-255.01(H).
C. Permit denial.
1. If the Director decides to deny the permit application, the Director shall provide the applicant with a written notice of intent to deny the permit application. The written notification shall include:
a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The applicant's right to appeal the denial with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the denial, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
2. The Director shall provide an opportunity for public comment under R18-9-A907 and R18-9-A908 on a denial.
3. The decision of the Director to deny the permit application takes effect 30 days after the decision is served on the applicant, unless the applicant files an appeal under A.R.S. 49-255.01(H)(1).

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation
A. Permit duration.
1. An AZPDES individual permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).
3. If a permittee of a large or medium MS4 allows a permit to expire by failing to reapply within the time period specified in subsection (B), the permittee shall submit a new application under R18-9-B901 and follow the application requirements under 40 CFR 122.26(d), which is incorporated by reference in R18-9-A905(A)(1)(d).

B. Permit reissuance.
1. A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.
2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:
a. The name, address, and telephone number of the MS4;
b. The name, address, and telephone number of the contact person;
c. The status of compliance with permit conditions, including an assessment of the appropriateness of the selected best management practices and progress toward achieving the selected measurable goals for each minimum measure;
d. The results of any information collected and analyzed, including monitoring data, if any;
e. A summary of the stormwater activities planned for the next reporting cycle;

f. A change in any identified best management practices or measurable goals for any minimum measure; and

g. Notice of relying on another governmental entity to satisfy some of the permit obligations.

C. Continuation. An AZPDES individual permit may continue beyond its expiration date if:

1. The permittee has submitted a complete application for an AZPDES individual permit at least 180 days before the expiration date of the existing permit and the permitted activity is of a continuing nature; and
2. The Department is unable, through no fault of the permittee, to issue an AZPDES individual permit on or before the expiration date of the existing permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-B905. Individual Permit Transfer

A. A permittee may request the Director to transfer an individual permit to a new permittee. The Director may modify, or revoke and reissue the permit to identify the new permittee, or make a minor modification to identify the new permittee.

B. Automatic transfer. The Director may automatically transfer an individual permit to a new permittee if:

1. The current permittee notifies the Director by certified mail at least 30 days in advance of the proposed transfer date and includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
2. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify, or revoke and reissue the permit. A modification under this subsection may include a minor modification specified in R18-9-B906(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. Permit modification, revocation and reissuance.

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:
   a. The Director receives a written request from an interested person;
   b. The Director receives information, such as when inspecting a facility;
   c. The Director receives a written request to modify, or revoke and reissue a permit from a permittee as required in the individual permit; or
   d. After review of a permit file, the Director determines one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
      i. If the Director decides a written request is not justified under 40 CFR 122.62 or subsection (B), the Director shall send the requester a brief written response giving a reason for the decision.
      ii. The denial of a request for modification, or revocation and reissuance is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).
2. If the Director tentatively decides to modify, or revoke and reissue an individual permit, the Director shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application.
   a. Modified individual permit. The Director shall reopen only the modified conditions when preparing a new draft permit and process the modifications.
   b. Revoked and reissued individual permit.
      i. The permittee shall submit a new application.
      ii. The Director shall reopen the entire permit just as if the permit had expired and was being reissued.
3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

B. Minor modifications.

1. Upon consent of the permittee, the Director may make any of the following modifications to an individual permit:
   a. Correct typographical errors;
   b. Update a permit condition that changed as a result of updating an Arizona water quality standard;
   c. Require more frequent monitoring or reporting by the permittee;
   d. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
   e. Allow for a change in ownership or operational control of a facility, if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
   f. Change the construction schedule for a new source discharger. The change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation before the discharge;
   g Delete a point source outfall if the discharge from that outfall is terminated and does not result in a discharge of pollutants from other outfalls except under permit limits;
   h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-A905(A)(8) as enforceable conditions of the permit, and
   i. Annex an area by a municipality.
2. Any modification processed under subsection (B)(1) is not subject to the public notice provision under R18-9-A907 or public participation procedures under R18-9-A908.

C. Permit termination.

1. The Director may terminate an individual permit during its term or deny reissuance of a permit for any of the following causes:
   a. The permittee's failure to comply with any condition of the permit;
   b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact;
   c. The Director determined that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
   d. A change occurs in any condition that requires either a temporary or permanent reduction or elimination of any discharge, sludge use, or disposal practice controlled by the permit, for example, a plant closure or termination of discharge by connection to a POTW.
2. If the Director terminates a permit during its term or denies a permit renewal application for any cause listed in subsection (C)(1), the Director shall issue a Notice of Intent to Terminate, except when the entire discharge is terminated.
   a. Unless the permittee objects to the termination notice within 30 days after the notice is sent, the termination is final at the end of the 30 days.
   b. If the permittee objects to the termination notice, the permittee shall respond in writing to the Director within 30 days after the notice is sent.
   c. Expedited permit termination. If a permittee requests an expedited permit termination procedure, the permittee shall certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.
   d. The denial of a request for termination is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-B907. Individual Permit Variances

A. The Director may grant or deny a request for any of the following variances:
1. An extension under section 301(i) of the Clean Water Act (33 U.S.C. 1311) based on a delay in completion of a POTW;
2. After consultation with EPA, an extension under section 301(k) of the Clean Water Act (33 U.S.C. 1311) based on the use of innovative technology;
3. A variance under section 316(a) of the Clean Water Act (33 U.S.C. 1326) for thermal pollution, or
4. A variance under R18-11-122 for a water quality standard.

B. The Director may deny, forward to EPA with a written concurrence, or submit to EPA without recommendation a completed request for:
1. A variance based on the economic capability of the applicant under section 301(c) of the Clean Water Act (33 U.S.C. 1311); or
2. A variance based on water quality related effluent limitations under 302(b)(2) (33 U.S.C. 1312) of the Clean Water Act.

C. The Director may deny or forward to EPA with a written concurrence a completed request for:
1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline is based; and
2. A variance based upon water quality factors under section 301(g) of the Clean Water Act (33 U.S.C. 1311).

D. If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance

A. The Director may issue a general permit to cover one or more categories of discharges, sludge use, or disposal practices, or facilities within a geographic area corresponding to existing geographic or political boundaries, if the sources within a covered category of discharges are either:
1. Stormwater point sources; or
2. One or more categories of point sources other than stormwater point sources, or one or more categories of treatment works treating domestic sewage, if the sources, or treatment works treating domestic sewage, within each category all:
   a. Involve the same or substantially similar types of operations;
   b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
   c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
   d. Require the same or similar monitoring; and
   e. Are more appropriately controlled under a general permit than under an individual permit.

B. Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.

C. Exemption from filing a Notice of Intent.
1. The following dischargers are not exempt from submitting a Notice of Intent:
   a. A discharge from a POTW;
   b. A combined sewer overflow;
   c. A MS4;
   d. A primary industrial facility;
   e. A stormwater discharge associated with industrial activity;
   f. A CAFO;
   g. A treatment works treating domestic sewage; and

h. A stormwater discharge associated with construction activity.

2. For dischargers not listed in subsection (C)(1), the Director may consider a Notice of Intent inappropriate for the discharge and authorize the discharge under a general permit without a Notice of Intent. In making this finding, the Director shall consider:
   a. The type of discharge,
   b. The expected nature of the discharge,
   c. The potential for toxic and conventional pollutants in the discharge,
   d. The expected volume of the discharge,
   e. Other means of identifying the discharges covered by the permit, and
   f. The estimated number of discharges covered by the permit.
3. The Director shall provide reasons for not requiring a Notice of Intent for a general permit in the public notice.

D. Notice of Intent. The Director shall specify the contents of the Notice of Intent in the general permit and the applicant shall submit information sufficient to establish coverage under the general permit, including, at a minimum:
1. The name, position, address, and telephone number of the owner of the facility;
2. The name, position, address, and telephone number of the operator of the facility, if different from subsection (D)(1);
3. The name and address of the facility;
4. The type and location of the discharge;
5. The receiving streams;
6. The latitude and longitude of the facility;
7. For a CAFO, the information specified in 40 CFR 122.21(i)(1) and a topographic map;
8. The signature of the certifying official required under 40 CFR 122.22; and
9. Any other information necessary to determine eligibility for the AZPDES general permit.

E. The general permit shall contain:
1. The expiration date; and
2. The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits, under R18-9-A905(A)(1), R18-9-A905(A)(2), and R18-9-A905(A)(3) and determined by the Director as necessary and appropriate for the protection of navigable waters.

F. The Department shall inform a permittee if EPA requests the permittee's Notice of Intent, unless EPA requests that the permittee not be notified.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-C902. Required and Requested Coverage Under an Individual Permit

A. Individual permit requirements.
1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:
   a. A discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general permit;
   b. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
   c. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
   d. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;
   e. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
   f. Standards for sewage sludge use or disposal are promulgated for the sludge use and disposal practices covered by the general permit; or
   g. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:
      i. The location of the discharge with respect to navigable waters,
      ii. The size of the discharge,
      iii. The quantity and nature of the pollutants discharged to navigable waters, and
      iv. Any other relevant factor.
2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
   a. A brief statement of the reasons for the decision,
   b. An application form,
   c. A statement setting a deadline to file the application,
   d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,
   e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
3. The discharger shall apply for a permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
4. If the permittee fails to submit the individual permit application within the time period established in subsection (A)(3), the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
5. Coverage under the general permit shall continue until an individual permit is issued unless the permit coverage is terminated under subsection (A)(4).

B. Individual permit request.
1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
   a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and

include the reasons supporting the request no later than 90 days after publication of the general permit.
b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C903. General Permit Duration, Reissuance, and Continuation
A. General permit duration.
1. An AZPDES general permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.
B. Continued coverage. Any permittee granted permit coverage before the expiration date automatically remains covered by the continued permit until the earlier of:
1. Reissuance or replacement of the permit, at which time the permittee shall comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
2. The date the permittee has submitted a Notice of Termination; or
3. The date the Director has issued an individual permit for the discharge; or
4. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C904. Change of Ownership or Operator Under a General Permit
If a change of ownership or operator occurs for a facility operating under a general permit:
1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.
a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted.
b. A permittee shall comply with the permit conditions specified in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.
2. New owner or operator.
a. The new owner or operator shall complete and file a Notice of Intent with the Department within the time period specified in the general permit before taking over operational control of, or initiation of activities at, the facility.
b. If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.
c. The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:
i. The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities,
ii. The construction is complete and final site stabilization is achieved, or
iii. The operator's status changes.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C905. General Permit Modification and Revocation and Reissuance
A. The Director may modify or revoke a general permit issued under R18-9-A907(B), R18-9-A908, and R18-9-C901 if one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
B. The Director shall follow the procedures specified in R18-9-A907(B) and R18-9-A908 to modify or revoke and reissue a general permit.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

R18-9-D901. CAFO Designations
A. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.
B. The Director shall designate an animal feeding operation as a CAFO if the animal feeding operation significantly contributes a pollutant to a navigable water. The Director shall consider the following factors when making this determination:
1. The size of the animal feeding operation and the amount of wastes reaching a navigable water;
2. The location of the animal feeding operation relative to a navigable water;
3. The means of conveyance of animal wastes and process wastewaters into a navigable water;
4. The slope, vegetation, rainfall, and any other factor affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into a navigable water; and
5. Any other relevant factor.
C. The Director shall conduct an onsite inspection of the animal feeding operation before the making a designation under subsection (B).
D. The Director shall not designate an animal feeding operation having less than the number of animals established in R18-9-A901(19)(a) as a CAFO unless a pollutant is discharged:

1. Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or
2. Directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.

E. If the Director makes a designation under subsection (B), the Director shall notify the owner or operator of the operation, in writing, of the designation.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D902. AZPDES Permit Coverage Requirements

A. Any person who owns or operates a CAFO, except as provided in subsections (B) and (C), shall submit an application for an individual permit under R18-9-B901(B) or seek coverage under a general permit under R18-9-C901(B) within the applicable deadline specified in R18-9-D904(A).

B. If a person who owns or operates a large CAFO receives a no potential to discharge determination under R18-9-D903, coverage under an AZPDES permit described in this Part is not required.

C. The discharge of manure, litter, or process wastewater to a navigable water from a CAFO as a result of the application of manure, litter, or process wastewater by the CAFO to land areas under its control is subject to AZPDES permit requirements, except where it is an agricultural stormwater discharge as provided in section 502(14) of the Clean Water Act (33 U.S.C. 1362(14)). For purposes of this Section, an "agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO when the person who owns or operates the CAFO has applied the manure, litter, or process wastewater according to site-specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the manure, litter, or process wastewater, as specified under 40 CFR 122.42(e)(1)(vi) through (ix).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D903. No Potential To Discharge Determinations for Large CAFOs

A. For purposes of this Section, "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to enter into a navigable water under any circumstance or climatic condition.

B. Any person who owns or operates a large CAFO and has not had a discharge within the previous five years may request a no potential to discharge determination by submitting to the Department:
1. The information specified in 40 CFR 122.21(f) and 40 CFR 122.21(i)(1)(i) through (ix) on a form obtained from the Department, by the applicable date specified in R18-9-D904(A); and
2. Any additional information requested by the Director to supplement the request or requested through an onsite inspection of the CAFO.

C. Process for making a no potential to discharge determination.
1. Upon receiving a request under subsection (B), the Director shall consider:
   a. The potential for discharges from both the production area and any land application area, and
   b. Any record of prior discharges by the CAFO.
2. The Director shall issue a public notice that includes:
   a. A statement that a no potential to discharge request has been received;
   b. A fact sheet, when applicable;
   c. A brief description of the type of facility or activity that is the subject of the no potential to discharge determination;
   d. A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and
   e. A description of the procedures for reaching a final decision on the no potential to discharge determination.
3. The Director shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.
4. The Director shall notify the owner or operator of the large CAFO of the final determination within 90 days of receiving the request.

D. If the Director determines that the operation has the potential to discharge, the person who owns or operates the CAFO shall seek coverage under an AZPDES permit within 30 days after the determination of potential to discharge.

E. A no potential to discharge determination does not relieve the CAFO from the consequences of a discharge. An unpermitted CAFO discharging a pollutant into a navigable water is in violation of the Clean Water Act even if the Director issues a no potential to discharge determination for the facility. If the Director issues a determination of no potential to discharge to a CAFO facility but the owner or operator anticipates a change in circumstances that could create the potential for a discharge, the owner or operator shall contact the Director and apply for and obtain permit authorization before the change of circumstances.

F. When the Director issues a determination of no potential to discharge, the Director retains the authority to subsequently require AZPDES permit coverage if:
1. Circumstances at the facility change;
2. New information becomes available; or
3. The Director determines, through other means, that the CAFO has a potential to discharge.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D904. AZPDES Permit Coverage Deadlines

A. Any person who owns or operates a CAFO shall apply for or seek coverage under an AZPDES permit and shall comply with all applicable AZPDES requirements, including the duty to maintain permit coverage under subsection (C).
1. Permit coverage deadline for an animal feeding operation operating before April 14, 2003.
   a. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was defined as a CAFO before February 2, 2004 shall apply for or seek permit coverage or maintain permit coverage and comply with the conditions of the applicable AZPDES permit;
   b. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was not defined as a CAFO until February 2, 2004 shall

apply for or seek permit coverage by a date specified by the Director, but no later than February 13, 2006;

c. An owner or operator of an animal feeding operation that operated before April 14, 2003 who changes the operation on or after February 2, 2004, resulting in the operation being defined as a CAFO, shall apply for or seek permit coverage as soon as possible, but no later than 90 days after the operational change. If the operational change will not make the operation a CAFO as defined before February 2, 2004, the owner or operator may take until April 13, 2006 or 90 days after the operation is defined as a CAFO, whichever is later, to apply for or seek permit coverage;

d. An owner or operator of an animal feeding operation that operated before April 14, 2003 who constructs additional facilities on or after February 2, 2004, resulting in the operation being defined as a CAFO that is a new source, shall apply for or seek permit coverage at least 180 days before the new source portion of the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.

2. Permit coverage deadline for an animal feeding operation operating on or after April 14, 2003. An owner or operator who started construction of a CAFO on or after April 14, 2003, including a CAFO subject to the effluent limitations guidelines in 40 CFR 412, shall apply for or seek permit coverage at least 180 days before the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.

3. Permit coverage deadline for a designated CAFO. Any person who owns or operates a CAFO designated under R18-9-D901(B) shall apply for or seek permit coverage no later than 90 days after receiving a designation notice.

B. Unless specified under R18-9-D903(E) and (F), the Director shall not require permit coverage for a CAFO that the Director determines under R18-9-D903 to have no potential to discharge. If circumstances change at a CAFO that has a no potential to discharge determination and the CAFO now has a potential to discharge, the person who owns or operates the CAFO shall notify the Director within 30 days after the change in circumstances and apply for or seek coverage under an AZPDES permit.

C. Duty to maintain permit coverage.

1. The permittee shall:
   a. If covered by an individual AZPDES permit, submit an application to renew the permit no later than 180 days before the expiration of the permit under R18-9-B904(B); or
   b. If covered by a general AZPDES permit, comply with R18-9-C903(B).
2. Continued permit coverage or reapplication for a permit is not required if:
   a. The facility ceases operation or is no longer a CAFO; and
   b. The permittee demonstrates to the Director that there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D905. Closure Requirements

A. Closure.

1. A person who owns or operates a CAFO shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
2. A person who owns or operates a CAFO shall submit a closure plan to the Department for approval 90 days before ceasing operation. The closure plan shall describe:
   a. For operations that met the "no potential to discharge" under R18-9-D903, facility-related information based on the Notice of Termination form for the applicable general permit;
   b. The approximate quantity of manure, process wastewater, and other materials and contaminants to be removed from the facility;
   c. The destination of the materials to be removed from the facility and documentation that the destination is approved to accept the materials;
   d. The method to treat any material remaining at the facility;
   e. The method to control the discharge of pollutants from the facility;
   f. Any limitations on future land or water use created as a result of the facility's operations or closure activities;
   g. A schedule for implementing the closure plan; and
   h. Any other relevant information the Department determines necessary.

B. The owner or operator shall provide the Department with written notice that a closure plan has been fully implemented within 30 calendar days of completion and before redevelopment.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
   a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and
   b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.

3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means a person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
   a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
   b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
   c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
   d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
   e. Sludge generated at an industrial facility during the treatment of industrial wastewater, including industrial wastewater combined with domestic sewage;
   f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
   g. Special wastes as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including a POTW for which the Department assumes local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the Director or by the Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
10. *"Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376).* A.R.S. 49-201(6).
11. "Coarse fragments" means rock particles in the gravel-size range or larger.
12. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
13. "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
14. "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.
15. "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters before treatment.
16. "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.
17. "Exceptional quality biosolids" means biosolids certified under R18-9-1013(A)(6) as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and one of the vector attraction reduction requirements in subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).
18. "Feed crops" means crops produced for animal consumption.
19. "Fiber crops" means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption.
20. "Food crops" means crops produced for human consumption.
21. "Gravel" means soil predominantly composed of rock particles that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
22. "Industrial wastewater" means wastewater that is generated in a commercial or industrial process.
23. "Land application," "apply biosolids," or "biosolids applied to the land" means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil to amend, condition, or fertilize the soil.
24. "Monthly average" means the arithmetic mean of all measurements taken during a calendar month.
25. "Municipality" means a city, town, county, district, association, or other public body, including an intergovernmental agency of two or more of the foregoing entities created by or under state law. The term includes special districts such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity that has as one of its principal responsibilities, the treatment, transport, use, or disposal of biosolids.
26. *"Navigable waters" means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)).* A.R.S. § 49-201(21).
27. "Other container" means a bucket, bin, box, carton, trailer, pickup truck bed, or a tanker vehicle or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
28. "Pathogen" means a disease-causing organism.
29. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political*

subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity. A.R.S. § 49-201(26).

30. "Person who prepares biosolids" means a person who generates biosolids during the treatment of domestic sewage in a treatment works, packages biosolids, or derives a new product from biosolids either through processing or by combining it with another material, including blending several biosolids together.
31. "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.
32. "Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chain, could cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformities in either organisms or reproduced offspring.
33. "Pollutant limit" means:
    a. A numerical value that describes the quantity of a pollutant allowed in a unit of biosolids such as milligrams per kilogram of total solids,
    b. The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
    c. The volume of biosolids that can be applied to a unit area of land such as gallons per acre.
34. "Privately owned treatment works" means a device or system owned by a non-governmental entity used to treat, recycle, or reclaim, either domestic sewage or a combination of domestic sewage and industrial waste that is generated off-site.
35. "Public contact site" means a park, sports field, cemetery, golf course, plant nursery, or other land with a high potential for public exposure to biosolids.
36. "Reclamation" means the use of biosolids to restore or repair construction sites, active or closed mining sites, landfill caps, or other drastically disturbed land.
37. "Responsible official" means a principal corporate officer, general partner, proprietor, or, in the case of a municipality, a principal executive official or any duly authorized agent.
38. "Runoff" means rainwater, leachate, or other liquid that drains over any part of a land surface and runs off of the land surface.
39. "Sand" means soil that contains more than 85% grains in the size range that will pass through a No. 4 (4.75 mm) sieve and be retained on a No. 200 (0.075 mm) sieve.
40. *"Sewage sludge":*
    (a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
    (b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
    (c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works. A.R.S. § 49-255(6)
41. "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include navigable waters.
42. "Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry-weight basis) in biosolids.
43. "Store biosolids" or "storage of biosolids" means the temporary holding or placement of biosolids on land before land application.
44. "Surface disposal site" means an area of land that contains one or more active sewage sludge units.
45. "Ton" means a net weight of 2000 pounds and is known as a short ton.
46. "Total solids" means the biosolids material that remains when sewage sludge is dried at 103° C to 105° C.
47. "Treatment of biosolids" means the thickening, stabilization, dewatering, and other preparation of biosolids for land application. Storage is not a treatment of biosolids.
48. "Unstabilized solids" means the organic matter in biosolids that has not been treated or reduced through an aerobic or anaerobic process.
49. "Vectors" means rodents, flies, mosquitoes, or other organisms capable of transporting pathogens.
50. "Volatile solids" means the amount of total solids lost when biosolids are combusted at 550° C in the presence of excess air.
51. "Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and do under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, cienegas, tinajas, and similar areas.

Historical Note

New Section recodified from R18-13-1502 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1002. Applicability and Prohibitions

A. This Article applies to:
1. Any person who:
    a. Prepares biosolids for land application or disposal in a sewage sludge unit or in an incinerator,
    b. Transports biosolids for land application or incineration, or disposal in a sewage sludge unit,
    c. Applies biosolids to the land,
    d. Owns or operates a sewage sludge unit,
    e. Owns or leases land to which biosolids are applied, or
    f. Owns or operates an incinerator that fires sewage sludge,
2. Biosolids applied to the land or placed on a surface disposal site,
3. Land where biosolids are applied, and
4. A surface disposal site.

B. The land application of biosolids in a manner consistent with this Article is exempt from the requirements of the aquifer protection program established under A.R.S. Title 49, Chapter 2, Article 3 and 18 A.A.C. 9, Articles 1, 2, and 3.

C. Except as provided in subsection (D), the land application of biosolids in a manner that is not consistent with Articles 9 and 10 of this Chapter is prohibited.

D. The Department may permit the land application of biosolids in a manner that differs from the requirements in R18-9-1007 and R18-9-1008 if the land application is permitted under the aquifer protection permit program established under A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1, 2, and 3.

E. Surface disposal site.

1. Any person who prepares biosolids that are placed in a sewage sludge unit, or places biosolids in a sewage sludge unit, or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C, which is incorporated by reference in R18-9-A905(A)(9), and
   a. The pathogen reduction requirements in R18-9-1006, and
   b. The vector attraction reduction requirements in R18-9-1010.
2. In addition to the requirements under subsection (E)(1), any person who owns or operates a biosolids surface disposal site shall apply for, and obtain, a permit under 18 A.A.C. 9, Articles 1 and 2.

F. A person shall not apply bulk biosolids to the land or place bulk biosolids in a surface disposal site or fire sewage sludge in a sewage sludge incinerator if the biosolids are likely to adversely affect a threatened or endangered species as listed under section 4 of the Endangered Species Act (16 U.S.C. 1533), or its designated critical habitat as defined in 16 U.S.C. 1532.

G. A person incinerating biosolids shall comply with the requirements set out in 40 CFR Part 503, Subpart E, July 1, 2013 edition, which is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the U.S. General Printing office at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

Historical Note

New Section recodified from R18-13-1501 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 21 A.A.R. 751, effective July 4, 2015 (Supp. 15-2).

R18-9-1003. General Requirements

A. A person shall not use or transport biosolids, apply biosolids to land, or place biosolids on a surface disposal site in Arizona, except as established in this Article.

B. The management practices in R18-9-1007 and R18-9-1008 do not apply if biosolids are exceptional quality biosolids.

C. The applicator shall obtain, submit to the Department, and maintain the information required to comply with the requirements of this Article.

D. The applicator shall not receive bulk biosolids without prior written confirmation of the filing of a "Request for Registration" under R18-9-1004.

E. The land owner or lessee of land on which bulk biosolids, that are not exceptional quality biosolids, have been applied shall notify any subsequent land owner and lessee of all previous land applications of biosolids and shall disclose any site restrictions listed in R18-9-1009 that are in effect at the time the property is transferred.

F. A person who prepares biosolids shall ensure that the applicable requirements in this Article are met when the biosolids are applied to the land or placed on a surface disposal site.

G. If necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids, the Department may impose, on a case-by-case basis, requirements for the use or disposal of biosolids, including exceptional quality biosolids, in addition to, or more stringent than, the requirements in this Article. The Department shall notify the preparer, applier, or land owner of these requirements by letter and include the justification for the requirements and the length of time or applicability for the requirements.

Historical Note

New Section recodified from R18-13-1503 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1004. Applicator Registration, Bulk Biosolids

A. Any person intending to land-apply bulk biosolids in Arizona shall submit, on a form provided by the Department, a completed "Request for Registration."

B. An applicator shall not engage in land application of bulk biosolids, unless the applicator has obtained a prior written acknowledgment of the Request for Registration or a supplemental request from the Department.

C. The Request for Registration for all biosolids, except exceptional quality biosolids, shall include:

1. The name, address, and telephone number of the applicator and any agent of the applicator;
2. The name and telephone number of a primary contact person who has specific knowledge of the land application activities of the applicator;
3. Whether the applicator holds a NPDES or AZPDES permit, and, if so, the permit number;
4. The identity of the person, if different from the applicator, including the NPDES or AZPDES permit number, who will prepare the biosolids for land application; and
5. The following information, unless the information is already on file at the Department as part of an approved land application plan, for each site on which application is anticipated to take place:
   a. The name, mailing address, and telephone number of the land owner and lessee, if any;
   b. The physical location of the site by county;
   c. The legal description of the site, including township, range, and section, or latitude and longitude at the center of each site;
   d. The number of acres or hectares at each site to be used;
   e. Except for sites described in R18-9-1005(D)(2)(c), background concentrations of the pollutants listed in Table 4 of R18-9-1005 from representative soil samples;
   f. The location of any portion of the site having a slope greater than 6%; and
   g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously

received biosolids, or when a site has not been used for land application for at least three consecutive years.

i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.

ii. If a site is not used for land application for at least three consecutive years, the applicator shall renotice the site following the process described in subsection (C)(5)(g)(i) before its reuse.

D. The Request for Registration for exceptional quality biosolids shall include the information in subsections (C)(1) through (C)(4).

E. A responsible official of the applicator shall sign the Request for Registration.

F. The Department shall mail a written acknowledgment of a Request for Registration or supplemental request, within 15 business days of receipt of the request.

G. An applicator wishing to use a site that has not been identified in a Request for Registration shall file a supplemental request with the Department before using the new site. Public notice requirements under R18-9-1004(C)(5)(g) apply.

Historical Note

New Section recodified from R18-13-1504 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1005. Pollutant Concentrations

A. A person shall not apply biosolids with pollutant concentrations that exceed any of the ceiling concentrations established in Table 1.

B. A person shall not apply biosolids sold or given away in a bag or other container that are not exceptional quality biosolids to a site if any annual pollutant loading rate in Table 3 will be exceeded. A person shall determine annual application rates using the methodology established in Appendix A.

C. A person shall not apply bulk biosolids to a lawn or garden unless the biosolids are exceptional quality biosolids.

D. Unless using exceptional quality biosolids, a person shall not apply bulk biosolids to a site when:

1. The pollutant concentrations exceed the levels in Table 2, or
2. Any cumulative pollutant loading rate in Table 4 will be exceeded. A person shall determine compliance with the site cumulative pollutant loading rates using the following:
   a. By identifying all known biosolids application events and information relevant to a site since September 13, 1979.
   b. By calculating the existing cumulative level of the pollutants established in Table 4 using actual analytical data from the application events or if actual analytical data from application events before April 1996 are not available, background concentrations determined by taking representative soil samples of the site, if it is known that the site received biosolids before April 1996.
   c. Background soil tests are not required for those sites that have not received biosolids before April 23, 1996.

Table 1. Ceiling Concentrations

Pollutant	Ceiling concentrations (milligrams per kilogram) [1]
Arsenic	75.0
Cadmium	85.0
Chromium	3000.0
Copper	4300.0
Lead	840.0
Mercury	57.0
Molybdenum	75.0
Nickel	420.0
Selenium	100.0
Zinc	7500.0

[1] Dry-weight basis.

Table 2. Monthly Average Pollutant Concentrations

Pollutant	Concentration limits (milligrams per kilogram)[1]
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0
Nickel	420.0
Selenium	100.0
Zinc	2800.0

[1] Dry-weight basis.

Table 3. Annual Pollutant Loading Rates

Pollutant	Annual pollutant loading rates (in kilograms per hectare)
Arsenic	2.0
Cadmium	1.9
Copper	75.0
Lead	15.0
Mercury	0.85
Nickel	21.0
Selenium	5.0
Zinc	140.0

Table 4. Cumulative Pollutant Loading Rates

Pollutant	Cumulative pollutant loading rates (in kilograms per hectare)
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0

Nickel	420.0
Selenium	100.0
Zinc	2800.0

Historical Note

New Section recodified from R18-13-1505 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1006. Class A and Class B Pathogen Reduction Requirements

A. An applicator shall ensure that all biosolids applied to land meet Class A or Class B pathogen reduction requirements at the time the biosolids are:
1. Placed on an active sewage sludge unit unless the biosolids are covered with soil or other material at the end of each operating day, or
2. Land applied.

B. Biosolids that are sold or given away in a bag or other container for land application, or that are applied on a lawn or home garden, shall meet the Class A pathogen reduction requirements established in subsection (D).

C. Land on which biosolids with Class B pathogen reduction requirements are applied is subject to the use restrictions established in R18-9-1009.

D. Biosolids satisfy the Class A pathogen reduction requirements when the density of fecal coliform is less than 1000 Most Probable Number per gram of total solids (dry-weight basis), or the density of *Salmonella sp.* bacteria is less than three Most Probable Number per four grams of total solids (dry-weight basis), and any one of the following alternative pathogen treatment options is used:
1. Alternative 1. The pathogen treatment process meets one of the following time and temperature requirements:
   a. When the percent solids of the biosolids are seven percent or greater, the temperature of the biosolids shall be held at 50° C or higher for at least 20 minutes. The temperature and time period is determined using the equation in subsection (D)(1)(b), except when small particles of the biosolids are heated by either warmed gases or an immiscible liquid;
   b. When the percent solids of the biosolids are seven percent or greater, and small particles of the biosolids are heated by either warmed gases or an immiscible liquid, a temperature of 50° C or higher shall be held for 15 seconds or longer. The temperature and time period is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius;

   c. When the percent solids of the biosolids are less than seven percent, the temperature of the biosolids is 50° C or higher and the time period is 30 minutes or longer. The temperature and time period shall be determined using the following equation:

$$D = \frac{50,070,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius; or

   d. When the percent solids of the biosolids are less than seven percent, and the time of heating is at least 15 seconds, but less than 30 minutes, the time and temperature is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius.

2. Alternative 2. The pathogen treatment process meets all the following parameters:
   a. The pH of the quantity of biosolids treated is raised to 12 or higher and held at least 72 hours;
   b. During the period that the pH is above 12, the temperature of the biosolids is held above 52° C for at least 12 hours; and
   c. At the end of the 72-hour period during which the pH is above 12, the biosolids are air dried to achieve a percent solids in the biosolids greater than 50%.
3. Alternative 3. The following conditions are met:
   a. The biosolids, before pathogen treatment and until the next monitoring event, have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis);
   b. The biosolids, before pathogen treatment and until the next monitoring event, have a viable helminth ova density less than one for four grams of total solids (dry-weight basis); and
   c. Once the density requirements in subsections (D)(3)(a) and (D)(3)(b) are consistently met after pathogen treatment and the values and ranges of the pathogen treatment process used are documented, the biosolids continue to be Class A with respect to enteric viruses and viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the previously documented values or ranges of values.
4. Alternative 4. The following requirements are met at the time the biosolids are used or disposed or at the time the biosolids are prepared for sale or given away in a bag or other container for application to the land:
   a. The biosolids have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis), and
   b. The biosolids have a viable helminth ova density less than one for four grams of total solids (dry-weight basis).
5. Alternative 5. Composting.
   a. Use either the within-vessel or the static-aerated-pile composting method, maintaining the temperature of the biosolids at 55° C or higher for three days; or
   b. Use the windrow composting method, maintaining the temperature of the biosolids at 55° C or higher for at least 15 days. The windrow shall be turned at

least five times when the compost is maintained at 55° C or higher.

6. Alternative 6. Heat drying. The biosolids are dried by direct or indirect contact with hot gases to reduce the moisture content to 10% or lower by weight. During the process:
   a. The temperature of the sewage sludge particles shall exceed 80° C, or
   b. The wet bulb temperature of the gas as the biosolids leave the dryer shall exceed 80° C.
7. Alternative 7. Heat treatment. The quantity of liquid biosolids treated are heated to a temperature of 180° C or higher for at least 30 minutes.
8. Alternative 8. Thermophilic aerobic digestion. Liquid biosolids are agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the biosolids is 10 days at 55 ° to 60° C.
9. Alternative 9. Beta ray irradiation. Biosolids are irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
10. Alternative 10. Gamma ray irradiation. Biosolids are irradiated with gamma rays from certain isotopes, such as ^{60}Cobalt and ^{137}Cesium at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
11. Alternative 11. Pasteurization. The temperature of the biosolids is maintained at 70° C or higher for at least 30 minutes.
12. Alternative 12. The Director shall approve another process if the process is equivalent to a Process to Further Reduce Pathogens specified in subsections (D)(5) through (D)(11), as determined by the EPA Pathogen Equivalency Committee.

E. Biosolids satisfy the Class B pathogen reduction requirements when the biosolids meet any one of the following options:

1. Alternative 1. The geometric mean of the density of fecal coliform in seven representative samples is less than either 2,000,000 Most Probable Number per gram of total solids (dry-weight basis), or 2,000,000 colony forming units per gram of total solids (dry-weight basis);
2. Alternative 2. Air drying. The biosolids are dried on sand beds or paved or unpaved basins for at least three months. During at least two of the three months, the ambient average daily temperature is above 0° C;
3. Alternative 3. Lime stabilization. Sufficient lime is added to the biosolids to raise the pH of the biosolids to 12 after at least two hours of contact;
4. Alternative 4. Aerobic digestion. The biosolids are agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature between 40 days at 20° C and 60 days at 15° C;
5. Alternative 5. Anaerobic digestion. The biosolids are treated in the absence of air for a specific mean cell residence time at a specific temperature between 15 days at 35° C to 55° C and 60 days at 20° C;
6. Alternative 6. Composting. Using the within-vessel, static-aerated-pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher for five consecutive days. For at least four hours during the five days, the temperature in the compost pile exceeds 55° C; or
7. Alternative 7. The Director shall approve another process if it is equivalent to a Process to Significantly Reduce Pathogens specified in subsections (E)(2) through (E)(6), as determined by the EPA Pathogen Equivalency Committee.

Historical Note

New Section recodified from R18-13-1506 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1007. Management Practices and General Requirements

A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site, except a site where bulk biosolids are applied for reclamation. The applicator shall not:

1. Apply bulk biosolids to soil with a pH less than 6.5 at the time of the application, unless the biosolids are treated under one of the procedures in subsections R18-9-1006(D)(2), R18-9-1006(E)(3), or R18-9-1010(A)(6), or the soil and biosolids mixture has a pH of 6.5 or higher immediately after land application;
2. Apply bulk biosolids to land with slopes greater than 6%, unless the site is operating under an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
3. Apply bulk biosolids to land under the following conditions:
   a. Bulk biosolids with Class A pathogen reduction. If the depth to groundwater is five feet (1.52 meters) or less;
   b. Bulk biosolids with Class B pathogen reduction.
      i. If the depth to groundwater is 10 feet (3.04 meters) or less; or
      ii. To gravel, coarse or medium sands, or sands with less than 15% coarse fragments, if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
4. Apply bulk biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
5. Store or apply bulk biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well or no closer than 250 feet (76.2 meters) from any other water well;
6. Store or apply bulk biosolids within 25 feet (7.62 meters) of a public right-of-way or private property line unless the applicator receives permission to apply bulk biosolids from the land owner or lessee of the adjoining property;
7. Apply bulk biosolids at an application rate greater than the agronomic rate of the vegetation or crop grown on the site;
8. Apply domestic septage or any other bulk biosolids with less than 10% solids at a rate that exceeds the annual application rate, calculated in gallons per acre for a 365-day period by dividing the amount of nitrogen needed by the crop or vegetation grown on the land, in pounds per acre per 365-day period, by 0.0026;
9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered, so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
10. Apply any additional bulk biosolids before a crop is grown on the site if the site has received biosolids con-

taining nitrogen at the equivalent of the agronomic rate appropriate for that crop;

11. Exceed the irrigation needs of the crop of an application site;
12. To minimize odors, apply bulk biosolids within 1000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied; or
13. Store bulk biosolids within 1000 feet (305 meters) of a dwelling unless the applicator obtains permission from the dwelling owner or lessee to store the biosolids at a shorter distance from the dwelling. If the dwelling owner or lessee changes, the applicator shall obtain permission from the new dwelling owner or lessee to continue to store the bulk biosolids within 1000 feet of the dwelling or move the biosolids to a location at least 1000 feet from the dwelling.

B. If biosolids are placed in a bag or other container, the person who prepares the biosolids shall distribute a label or information sheet to the person receiving the material. This label or information sheet shall, at a minimum, contain the following information:

1. The identity and address of the person who prepared the biosolids;
2. Instructions on the proper use of the material, including agronomic rates and an annual application rate that ensures that the annual pollutant rates established in R18-9-1005 are not exceeded; and
3. A statement that application of biosolids to the land shall not exceed application rates described in the instructions on the label or information sheet.

Historical Note

New Section recodified from R18-13-1507 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site where the bulk biosolids are applied for reclamation. The applicator shall not:

1. Apply bulk biosolids unless the soil and biosolids mixture has a pH of 5.0 or higher immediately after land application;
2. Apply bulk biosolids to land with slopes greater than 6% unless:
   a. The site is operating under an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
   b. The site is reclaimed as specified under A.R.S. Title 27, Chapter 5, and controls are in place to prevent runoff from leaving the application area; or
   c. Runoff from the site does not reach navigable waters;
3. Apply bulk biosolids to land under the following conditions:
   a. Bulk biosolids with Class A pathogen reduction. To land if the depth to groundwater is 5 feet (1.52 meters) or less;
   b. Bulk biosolids with Class B pathogen reduction.
      i. To land if the depth to groundwater is 10 feet (3.04 meters) or less; and
      ii. To gravel, coarse or medium sands, or sands with less than 15% coarse fragments if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
4. Apply bulk biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
5. Store or apply bulk biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well, unless the applicator justifies and the Department approves a shorter distance, or apply bulk biosolids closer than 250 feet (76.2 meters) from any other water well;
6. Store or apply bulk biosolids within 1000 feet (305 meters) of a public right-of-way or private property line unless the applicator receives permission to apply bulk biosolids from the land owner or lessee of the adjoining property;
7. Exceed a total of 150 dry tons per acre to any portion of a reclamation site if bulk biosolids are applied;
8. Apply bulk biosolids with less than 10% solids;
9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
10. Apply more water than necessary to control dust and establish vegetation; and
11. Apply bulk biosolids within 1000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied.
12. Store bulk biosolids within 1000 feet (305 meters) of a dwelling unless the applicator obtains permission from the dwelling owner or lessee to store the biosolids at a shorter distance from the dwelling. If the dwelling owner or lessee changes, the applicator shall obtain permission from the new dwelling owner or lessee to continue to store the bulk biosolids within 1000 feet of the dwelling or move the biosolids to a location at least 1000 feet from the dwelling.

B. The requirements of R18-9-1007(B) apply if biosolids placed in a bag or other container are used to reclaim a site.

Historical Note

New Section recodified from R18-13-1508 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1008 renumbered to R18-9-1009; new Section R18-9-1008 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1009. Site Restrictions

A. The following site restrictions apply to land where biosolids, which do not meet the Class A pathogen reduction requirements established in R18-9-1006, are land-applied.

1. A person shall not:
   a. Harvest food crop parts that touch the biosolids, or biosolids and soil mixture, but otherwise grow above the land's surface for 14 months following application;
   b. Harvest food crop parts growing in or below the land's surface for 20 months following application if

the biosolids remain unincorporated on the land's surface for four months or more;
c. Harvest food crop parts growing in or below the land's surface for 38 months following application if the biosolids remain on the land's surface for less than four months before incorporation;
d. Harvest food, feed, and fiber crops for 30 days after application;
e. Graze animals on the land for 30 days after application; or
f. Harvest turf to be used at a public contact site or private residence for one year after application.
2. A person shall restrict public access to:
a. Public contact sites for one year after application, and
b. Land with a low potential for public exposure for 30 days after application.

B. If the vector attraction reduction requirement is met using the method:
1. In R18-9-1010(C)(1) or R18-9-1010(C)(2), the requirements of subsection (A) apply to domestic septage applied to agricultural land, forests, or reclamation sites; or
2. In R18-9-1010(C)(3), the requirements of subsection (A)(1)(a) through (A)(1)(d) apply to domestic septage applied to agricultural land, forests, or reclamation sites.

C. Once application is completed at a site, the applicator shall, in writing, provide the land owner and lessee with the following information:
1. The cumulative pollutant loading at the site if it is greater than or equal to 90% of the available site capacity established in Table 4 of R18-9-1005;
2. Any restriction established in this Section that applies to the property and the nature of the restriction; and
3. The signature of a responsible official of the applicator on this document that includes the following statement:
"I certify under penalty of law, that the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for false representations, including fines and imprisonment."

D. The land owner or lessee shall provide each applicator with a signature indicating receipt of the site restriction statement.

Historical Note
New Section recodified from R18-13-1509 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1009 renumbered to R18-9-1010; new Section R18-9-1009 renumbered from R18-9-1008 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1010. Vector Attraction Reduction

A. Except as provided in subsection (B), an applicator or person who prepares biosolids shall use one of the following vector attraction reduction procedures if biosolids are land-applied:
1. Reducing the mass of volatile solids by a minimum of 38% using the calculation procedures established in "Environmental Regulations and Technology -- Control of Pathogens and Vector Attraction in Sewage Sludge," EPA/625/R-92-013, published by the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, 1999 edition. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State;
2. If the 38% volatile solids reduction cannot be met for anaerobically digested biosolids the reduction can be met by digesting a portion of the previously digested material anaerobically in a laboratory in a bench-scale unit for 40 additional days at a temperature between 30° C and 37° C. Vector attraction reduction is achieved if, at the end of the 40 days, the volatile solids in the material at the beginning of the period are reduced by less than 17%;
3. If the 38% volatile solids reduction cannot be met for aerobically digested biosolids, the reduction can be met by digesting a portion of the previously digested material, which has a percent solids of 2% or less, aerobically in a laboratory in a bench-scale unit for 30 additional days at 20° C. Vector attraction reduction is achieved if, at the end of the 30 days, the volatile solids in the material at the beginning of the period are reduced by less than 15%;
4. Treat the biosolids in an aerobic process during which the specific oxygen uptake rate (SOUR) is equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry-weight basis) at 20° C;
5. Treat the biosolids in an aerobic process for 14 days or longer, during which the temperature of the biosolids is higher than 40° C and the average temperature of the biosolids is higher than 45° C;
6. Raising the pH of the biosolids to 12 or higher by alkali addition and, without the addition of more alkali, remain at 12 or higher for two hours and at 11.5 or higher for an additional 22 hours;
7. The percent solids of the biosolids that do not contain unstabilized solids generated in a primary wastewater treatment process is equal to or greater than 75% based on the moisture content and total solids before mixing with other materials;
8. The percent solids of the biosolids containing unstabilized solids generated in a primary wastewater treatment process are equal to or greater than 90% based on the moisture content and total solids before mixing with other materials;
9. Injecting the biosolids below the surface of the land so that no significant amount of biosolids is present on the land surface one hour after injection. If the biosolids meet Class A pathogen reduction, injection shall occur within eight hours after being discharged from a Class A pathogen treatment process; or
10. Incorporating the biosolids into the soil within six hours after application. If the biosolids meet Class A pathogen reduction, application shall occur within eight hours after being discharged from a Class A pathogen treatment process.

B. Biosolids that are sold or given away in a bag or other container, or are applied to a lawn or home garden, shall meet one of the vector attraction reduction alternatives established in subsections (A)(1) through (A)(8).

C. For domestic septage, vector attraction reduction is met by one of the following methods:
1. By injecting as specified in subsection (A)(9);
2. By incorporating as specified in subsection (A)(10); or
3. By raising the pH of the domestic septage to 12 or higher through the addition of alkali and, without the addition of more alkali, holding the pH at 12 or higher for at least 30 minutes.

Historical Note

New Section recodified from R18-13-1510 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1010 renumbered to R18-9-1011; new Section R18-9-1010 renumbered from R18-9-1009 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1011. Transportation

A. A transporter of bulk biosolids into and within Arizona shall use covered trucks, trailers, rail-cars, or other vehicles that are leakproof.

B. A transporter of bulk biosolids in liquid or semisolid form, including domestic septage, into and within Arizona shall comply with the requirements in A.A.C. R18-13-310. A transporter of bulk biosolids in solid form into and within Arizona shall comply with the requirements in A.A.C. R18-13-310.

C. A transporter of biosolids shall clean any truck, trailer, rail-car, or other vehicle used to transport biosolids to prevent odors or insect breeding. A transporter shall clean any tank vessel used to transport commercial or industrial septage or restaurant grease-trap wastes, that is also used to haul domestic septage, before loading the domestic septage to ensure that mixing of wastes does not occur.

D. If bulk biosolids are spilled while being transported, the transporter shall:

1. Immediately pick up any spillage, including any visibly discolored soil, unless otherwise determined by the Department on a case-by-case basis;
2. Within 24 hours after the spill, notify the Department of the spill and submit written notification of the spill within seven days. The written notification shall include the location of the spill, the reason it occurred, the amount of biosolids spilled, and the steps taken to clean up the spill.

Historical Note

New Section recodified from R18-13-1511 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1011 renumbered to R18-9-1012; new Section R18-9-1011 renumbered from R18-9-1010 and amended 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. 4923, effective January 5, 2003 (Supp. 02-4). A.C.C. citation corrected in subsection (B) at the request of the Department; Office file number M16-185 (Supp. 16-3).

R18-9-1012. Self-monitoring

A. Except as provided in subsection (B) the person who prepares the biosolids shall conduct self-monitoring events at the frequency listed in Table 5 for the pollutants listed in R18-9-1005, the pathogen reduction in R18-9-1006 and the vector attraction reduction requirements in R18-9-1010.

Table 5. Frequency of Self-monitoring

Amount of biosolids prepared (tons/metric tons per 365-day period[(1)])	**Frequency**
Greater than zero but less than 319.6/290	Once per year
Equal to or greater than 319.6/290 but less than 1,653/1,500	Once per quarter (Four times per year)
Equal to or greater than 1,653/1,500 but less than 16,530/15,000	Once per 60 days (Six times per year)
Equal to or greater than 16,530/15,000	Once per month (12 times per year)

[(1)] The amount of biosolids prepared in a calendar year (dry-weight basis).

B. If biosolids are stockpiled or lagooned, the person shall sample the biosolids for pathogen and vector attraction reduction before land application. A person shall sample in a manner that is representative of the entire stockpile or lagoon.

C. A person who prepares biosolids shall submit additional or more frequent biosolids samples, collected and analyzed during the reporting period, to the Department with the regularly-scheduled data required in subsection (A).

D. The Department may order the person who prepares biosolids or the applicator to collect and analyze additional samples to measure pollutants of concern other than those established in Table 1 of R18-9-1005.

E. The applicator, person who prepares biosolids, or a person collecting samples for the applicator or preparer for analysis shall obtain the samples in a manner that does not compromise the integrity of the sample, sample method, or sampling instrument and shall be representative of the quality of the biosolids being applied during the reporting period.

F. A person responsible for sampling the biosolids shall track biosolids samples using a chain-of-custody procedure that documents each person in control of the sample from the time it was collected through the time of analysis.

G. The person who prepares biosolids or the applicator shall ensure that the biosolids samples are analyzed as specified by the analytical methods established in 40 CFR 503.8, July 1, 2001 edition, or by the wastewater sample methods and solid, liquid, and hazardous waste sample methods established in A.A.C. R9-14-612 and R9-14-613. The person who prepares the biosolids or the applicator shall ensure that the biosolids analyses are performed at a laboratory operating in compliance with A.R.S. § 36-495 et seq. The information in 40 CFR 503.8 is incorporated by reference, does not include any later amendments or editions of the incorporated matter and is on file with the Department and the Office of the Secretary of State.

H. The person who prepares the biosolids or the applicator shall monitor pathogen and vector attraction reduction treatment operating parameters, such as time and temperature, shall be monitored on a continual basis.

I. An applicator shall conduct and record monitoring of each site for the management practices established in R18-9-1007 and R18-9-1008.

J. A person shall maintain, as specified in R18-9-1013, and report to the Department as specified in R18-9-1014, all compliance measurements, including the analysis of pollutant concentrations.

Historical Note

New Section recodified from R18-13-1512 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1012 renumbered to R18-9-1013; new Section R18-9-1012 renumbered from R18-9-1011 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1013. Recordkeeping

A. A person who prepares biosolids shall collect and retain the following information for at least five years:

1. The date, time, and method used for each sampling activity and the identity of the person collecting the sample;
2. The date, time, and method used for each sample analysis and the identity of the person conducting the analysis;

3. The results of all analyses of pollutants regulated under R18-9-1005 and organic and ammonium nitrogen to comply with R18-9-1007(A)(7);
4. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
5. A description of the methods used, if any, and the operating values and ranges observed in any pre-land application, vector attraction reduction activities required in R18-9-1010(A); and
6. For the records described in subsections (A)(1) through (A)(5), the following certification statement signed by a responsible official of the person who prepares the biosolids:

"I certify, under penalty of law, that the pollutant analyses and the description of pathogen treatment and vector attraction reduction activities have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

B. An applicator of bulk biosolids, except exceptional quality biosolids, shall collect the following information for each land application site, and, except as indicated in subsection (B)(6), shall retain this information for at least five years:
1. The location of each site, by either street address or latitude and longitude;
2. The number of acres or hectares;
3. The date and time the biosolids were applied;
4. The amount of biosolids (in dry metric tons);
5. The biosolids loading rates for domestic septage and other biosolids with less than 10 percent solids in tons or kilograms of biosolids per acre or hectare and in gallons per acre and the biosolids loading rates for other biosolids in tons or kilograms of biosolids per acre or hectare;
6. The cumulative pollutant levels of each regulated pollutant (in tons or kilograms per acre or hectare). The applicator shall retain these records permanently;
7. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
8. A description of the activities and measures used to ensure compliance with the management practices in R18-9-1007 and R18-9-1008, including information regarding the amount of nitrogen required for the crop grown on each site;
9. If vector attraction reduction was not met by the person who prepares the biosolids, a description of the vector attraction reduction activities used by the applicator to ensure compliance with the requirements in R18-9-1010;
10. A description of any applicable site restriction imposed by in R18-9-1009 if biosolids with Class B pathogen reduction have been applied and documentation that the applicator has notified the land owner and lessee of these restrictions;
11. For the records described in subsections (B)(1) through (B)(8), the following certification statement signed by a responsible official of the applicator of the biosolids:

"I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

12. The information in subsections (A)(1) through (A)(6) if the person who prepares the biosolids is not located in this state.

C. All records required for retention under this Section are subject to periodic inspection and copying by the Department.

D. If there is unresolved litigation, including enforcement, concerning the activities documented by the records required in this Section, the period of record retention shall be extended pending final resolution of the litigation.

Historical Note

New Section recodified from R18-13-1513 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1013 renumbered to R18-9-1014; new Section R18-9-1013 renumbered from R18-9-1012 and amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1014. Reporting

A. A person who prepares biosolids for application shall provide the applicator with the necessary information to comply with this Article including the concentration of pollutants listed in R18-9-1005 and the concentration of nitrogen in the biosolids.

B. A transporter shall report spills to the Department under R18-9-1011(D).

C. A bulk applicator of biosolids other than exceptional quality biosolids shall provide the land owner and lessee of land application sites with information on the concentrations of the pollutants listed in R18-9-1005 and loading rates of biosolids applied to that site, and any applicable site restrictions under R18-9-1009.

D. A bulk applicator of biosolids other than exceptional quality biosolids shall report to the Department if 90% or more of any cumulative pollutant loading rate has been used at a site.

E. On or before February 19 of each year, any person land-applying bulk biosolids that are not exceptional quality biosolids shall, by letter or on a form provided by the Department, report to the Department the following applicable information for the previous calendar year:
1. The actual sites used; and
2. For each site used, the following information:
   a. The amount of biosolids applied (in tons or kilograms per acre or hectare);
   b. The application loading rates (in tons or kilograms per acre or hectare, and gallons per acre for domestic septage);
   c. The concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);
   d. The pathogen treatment methodologies used during the year and the results; and
   e. The vector attraction reduction methodologies used during the year and the results.

F. On or before February 19 of each year, a person preparing biosolids in a Class I Sludge Management Facility, POTW with a design flow rate equal to or greater than one million gallons per day, or POTW that serves 10,000 people or more, that are

applied to land, shall, by letter or on a form provided by the Department, report to the Department all the following applicable information regarding their activities during the previous calendar year:

1. The amount of biosolids received if the preparer purchased or received the biosolids from another preparer or source;
2. The amount of biosolids produced (tons or kilograms);
3. The amount of biosolids distributed;
4. The concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);
5. The pathogen treatment methodologies used during the year, including the results; and
6. The vector attraction reduction methodologies used during the year, including the results.

G. All annual self-monitoring reports shall contain the following certification statement signed by a responsible official:

"I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Historical Note

New Section recodified from R18-13-1514 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1014 renumbered to R18-9-1015; new Section R18-9-1014 renumbered from R18-9-1013 and amended 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. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1015. Inspection

A person subject to this Article shall allow, during reasonable times, a representative of the Department to enter property subject to this Article, to:

1. Inspect all biosolids pathogen and vector treatment facilities, transportation vehicles, incinerators that fire sewage sludge, and land application sites to determine compliance with this Article;
2. Inspect and copy records prepared in accordance with this Article; and
3. Sample biosolids quality.

Historical Note

Renumbered from R18-9-1014 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 21 A.A.R. 751, effective July 4, 2015 (Supp. 15-2).

Appendix A. Procedures to Determine Annual Biosolids Application Rates

The following procedure determines the annual biosolids application rate (ABAR) that ensures that the annual pollutant loading rates in Table 3 of R18-9-1005 are not exceeded.

1. The relationship between the annual pollutant loading rate (APLR) for a pollutant and the ABAR is shown in the following equation.

   APLR = C x ABAR x 0.001

   APLR = Annual pollutant loading rate in kilograms of biosolids, per hectare, per 365-day period;
   C = Pollutant concentration in milligrams, per kilogram of total solids (dry-weight basis);
   ABAR = Annual biosolids application rate in metric tons, per hectare, per 365-day period (dry-weight basis); and
   0.001 = A conversion factor.
   metric ton = 1.102 short tons
   hectare = 2.471 acres
2. The ABAR is calculated using the following procedure:
   a. Analyze a biosolids sample to determine a concentration for each of the pollutants listed in Table 3 of R18-9-1005; and
   b. Using each of the pollutant concentrations from subsection (2)(a) and the APLRs from Table 3 of R18-9-1005, calculate a separate ABAR for each pollutant using the following equation:

   $$ABAR = \frac{APLR}{C \times 0.001}$$

   c. The ABAR for biosolids is the lowest value calculated in under subsection (2)(b) for any pollutant.

Historical Note

New Appendix recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

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 regulating 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 not 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. Use 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 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 shall establish by rule a fee as a condition of licensure, including a maximum fee. 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, articles 8 and 9 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 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.

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 the fees.

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.

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.

2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.

3. Injection wells.

4. Land treatment facilities.

5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.

6. Mine tailings piles and ponds.

7. Mine leaching operations.

8. Underground water storage facilities.

9. Sewage treatment facilities, including on-site wastewater treatment facilities.

10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, is available to the public on request.

E. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-242. Procedural requirements for individual permits; annual registration of permittees; fee

A. The director shall prescribe by rule requirements for issuing, denying, suspending or modifying individual permits, including requirements for submitting notices, permit applications and any additional information necessary to determine whether an individual permit should be issued, and shall prescribe conditions and requirements for individual permits.

B. Each owner of an injection well, a land treatment facility, a dry well, an on-site wastewater treatment facility with a capacity of more than three thousand gallons per day, a recharge facility or a facility that discharges to protected surface waters to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily discharge of pollutants pursuant to subsection E of this section.

C. Each owner of a surface impoundment, a facility that adds a pollutant to a salt dome formation, salt bed formation, underground cave or mine, a mine tailings pile or pond, a mine leaching operation, a sewage or sludge pond or a wastewater treatment facility to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily influent of pollutants pursuant to subsection E of this section.

D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.

E. The director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility.

F. For a site with more than one permit subject to the requirements of this section, the owner or operator of the facility at that site shall pay the annual registration fee prescribed pursuant to subsection E of this section based on the permit that covers the greatest gallons of discharge or influent per day plus one-half of the annual registration fee for gallons of discharge or influent for each additional permit.

G. The director shall prescribe the procedures to register the notice of disposal or permit and collect the fee under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund to pay the reasonable and necessary costs of administering the registration program.

49-245. Criteria for issuing general permit

A. The director may issue by rule a general permit for a defined class of facilities if all of the following apply:

1. The cost of issuing individual permits cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

2. The facilities, activities or practices in the class are substantially similar in nature.

3. The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity will meet the applicable requirements in section 49-243 or, as to facilities for which the director has established best management practices, section 49-246.

B. In addition to other applicable enforcement actions, if a person violates the conditions of a general permit, the director may revoke the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended at any time by the director if necessary to comply with this chapter.

C. Rules establishing a general permit shall include terms and conditions to ensure that all discharges and facilities will meet the requirements of this chapter and shall provide for the collective or individual revocation of the general permit if necessary to ensure compliance with this chapter.

D. Rules adopted pursuant to subsection A of this section may require a person who owns or operates a facility seeking coverage under a general permit to notify the director of the person's intent to operate the facility pursuant to the general permit and pay the applicable fee required pursuant to section 49-203.

E. Until revised rules that are proposed after December 31, 2024 are effective, and only for on-site wastewater treatment facilities with a design flow of three thousand gallons per day or more, an on-site wastewater treatment facility with a design flow of three thousand gallons per day or more but less than seventy-five thousand gallons per day may discharge under a general permit if the on-site wastewater treatment facility complies with existing general permit rules and is operated by a service provider that is certified by the technology manufacturer. The director shall include an addendum to the general permit authorization that requires on-site wastewater treatment facilities to conduct maintenance, monitoring, recordkeeping and reporting in addition to the requirements of the general permit.

F. For an on-site wastewater treatment facility with a design flow of fifty thousand gallons per day or more or for a site with multiple on-site wastewater treatment facilities with a collective design flow of fifty thousand gallons per day or more, the director may require the facility by an addendum to the general permit authorization to provide adequate financial assurance.

G. The director shall establish fees for general permits issued pursuant to subsections E and F of this section. The department shall deposit the fees, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

H. Not later than one hundred and eighty days after the effective date of revised rules that are proposed after December 31, 2024, and only for on-site wastewater treatment facilities with a design flow of three thousand gallons per day or more, a permittee prescribed by subsection E or F of this section shall transition the permittee's facility consistent with the revised on-site wastewater treatment facility permit program.

49-255.01. Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; general permit

A. A person shall not discharge except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article or rules authorized under section 49-203, subsection A, paragraph 2.

2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

B. The director shall adopt rules to establish an AZPDES permit program for discharges to WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement for WOTUS that is more stringent than any requirement of the clean water act. The director shall not adopt any requirement that conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and not more stringent than the clean water act and this article.

C. The rules adopted by the director under subsection B of this section shall provide for:

1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.

2. Establishing permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 8 including case-by-case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).

3. Modifications and variances as allowed by the clean water act.

4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

D. This article does not affect the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.

E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:

1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:

(a) An upset occurred and that the permittee can identify the specific cause of the upset.

(b) The permitted facility was being properly operated at the time of the upset.

(c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours after the upset.

(d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.

2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.

F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:

1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.

2. Limitations for pollutants in WOTUS adopted pursuant to sections 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.

G. Notwithstanding section 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

1. Within the thirty-day period, an appeal is filed with the water quality appeals board pursuant to section 49-323.

2. A later effective date is specified in the decision.

I. In addition to other reservations of rights provided by this chapter, this article does not impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

J. The director shall establish by rule fees, including maximum fees, to pay expenses incurred in implementing the AZPDES program. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

K. Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.

L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:

1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.

3. The owner or operator complies with good housekeeping measures included in the general permit.

4. The owner or operator maintains the capacity of the retention basins.

5. Construction conforms to the standards prescribed by this section.

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

49-255.02. Pretreatment program; rules and standards

A. The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of sections 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act, except the director shall apply the pretreatment program to publicly owned treatment works that discharge to a non-WOTUS protected surface water.

B. The rules adopted by the director shall provide for all of the following:

1. Development or modification of local pretreatment programs by the owners of publicly owned treatment works that discharge or as otherwise required under the clean water act or this article to prevent the use or disposal of sewage sludge produced by a publicly owned treatment works in violation of section 405 of the clean water act or requirements established pursuant to section 49-255.03, subsection A.

2. Approval by the director of new or modified local pretreatment programs or site specific modifications to pretreatment standards.

3. Oversight by the director of local program implementation.

C. The rules adopted by the director shall provide for the department to ensure that any industrial user of any publicly owned treatment works will comply with the requirements of sections 307 and 308 of the clean water act.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-255.01. Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; general permit

A. A person shall not discharge except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article or rules authorized under section 49-203, subsection A, paragraph 2.

2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

B. The director shall adopt rules to establish an AZPDES permit program for discharges to WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement for WOTUS that is more stringent than any requirement of the clean water act. The director shall not adopt any requirement that conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and not more stringent than the clean water act and this article.

C. The rules adopted by the director under subsection B of this section shall provide for:

1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.

2. Establishing permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 8 including case-by-case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).

3. Modifications and variances as allowed by the clean water act.

4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

D. This article does not affect the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.

E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:

1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:

(a) An upset occurred and that the permittee can identify the specific cause of the upset.

(b) The permitted facility was being properly operated at the time of the upset.

(c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours after the upset.

(d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.

2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.

F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:

1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.

2. Limitations for pollutants in WOTUS adopted pursuant to sections 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.

G. Notwithstanding section 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

1. Within the thirty-day period, an appeal is filed with the water quality appeals board pursuant to section 49-323.

2. A later effective date is specified in the decision.

I. In addition to other reservations of rights provided by this chapter, this article does not impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

J. The director shall establish by rule fees, including maximum fees, to pay expenses incurred in implementing the AZPDES program. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

K. Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.

L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:

1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.

3. The owner or operator complies with good housekeeping measures included in the general permit.

4. The owner or operator maintains the capacity of the retention basins.

5. Construction conforms to the standards prescribed by this section.

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

D-10.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 11

Amend: R18-11-101, R18-11-301

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 11

Amend: R18-11-101, R18-11-301

Summary:

This expedited rulemaking from the Arizona Department of Environmental Quality (Department) seeks to amend two (2) rules in Title 18, Chapter 11. The subject matter for Chapter 5 is Water Quality Standards. The Department is proposing to amend the definitions sections found at R18-11-101 and R18-11-301. The amendments will add statutory references and other rule references to multiple definitions along with correcting spelling and grammatical errors.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this portion of the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons; but amends rules that are outdated, and clarifies language of rules without changing their effects.

Council staff believe the current rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3) and (6). The Department satisfies (A)(3) and (A)(6)

because the proposed amendments will correct spelling errors found in definitions for both R18-11-101 and R18-11-301, along with correcting changes to references to both statutes and other Department rules.

2. 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.

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

The Department indicates it did not receive any public comments regarding this rulemaking.

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

The Department indicates no changes were made between the proposed and final rulemaking.

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

The Clean Water Act (CWA) 33 U.S.C. §1251 et seq., is applicable to these rules. However, the Department has indicated that the proposed rules are not more stringent than this corresponding federal law.

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

Not applicable. The Department has indicated that no permit or license is required or issued as part of these rules.

7. 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 any study relevant to this rulemaking.

8. Conclusion

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend three rules in Title 18, Chapter 11 for the purpose of fulfilling objectives from a previous 5 YRR and to correct terminology and references to statutes and other rules. The proposed amendments do not implement any substantive changes and will make the rules easier

to understand by the general public because of the added references and correction of spelling errors.

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

Council staff recommends approval of this rulemaking.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

December 11, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 4, 5, 9, and 11 – "Water Quality Rule Corrections"

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for February 4, 2025.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)
   A. The public record closed for all rules on October 7, 2024 at midnight.
   B. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemakings, additionally, fulfill the requirements under A.R.S. § 41-1027(A)(3), "correct[ing] typographical errors…or clarifies language of a rule without changing its effect"; (A)(4), "adopt[ing] or incorporat[ing] by reference without material change federal statutes or regulations; (A)(6), "amend[ing] or repeal[ing] rules that are outdated, redundant or otherwise no longer necessary for the operation of state government"; and (A)(7), "implement[ing], without material change, a course of action that is proposed in a five-year review report approved by the council".
   C. The rulemaking activities relate to the following five-year review reports:
      1. 18 A.A.C. 4, Art. 1, 2, 3, 6, & 8 (submitted February 28, 2022, approved October 4, 2022);
      2. 18 A.A.C. Ch. 5, Art. 1, 2, 3, 4, & 5 (submitted August 27, 2021, approved November 2, 2021);

3. 18 A.A.C. Ch. 9, Art. 2 (submitted January 20, 2021, approved April 6, 2021), Art. 9 (submitted April 26, 2022, approved August 2, 2022) ;

D. 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.

E. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:

1. This cover letter.
2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 4, 5, Chapter 9, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. ADEQ did not receive any written comments on the NPERMs for Chapters 4, 5, 9, or 11.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
    a. Chapter 4:
        i. Authorizing statutes (general): A.R.S. §§ 49-104(B)(4), 49-353(A)(2)
        ii. Implementing statutes (specific): A.R.S. § 49-353.01
    b. Chapter 5:
        i. Authorizing statutes (general): A.R.S. § 49-104(B)(11)-(13)
        ii. Implementing statutes (specific): A.R.S. §§ 49-352, 49-353(A)(2), 49-353.01(A)(1), and 49-361
    c. Chapter 9:
        i. Authorizing statutes (general): A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), and 49-255.02
    d. Chapter 11:
        i. Authorizing statutes (general): A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)
        ii. Implementing statutes (specific): A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

II. Additional items required by GRRC:

A. Exemption Memo Request.

B. Governor's Office initial written approval.
C. Governor's Office final written approval.

Thank you for your timely review and approval. Please contact Trevor Baggiore, Division Director, Water Quality Division, 602-771-2321 or baggiore.trevor@azdeq.gov, if you have any questions.

Sincerely,

Karen Peters, Deputy Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

PREAMBLE

1. Permission to proceed with this final expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:

May 6, 2024.

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-11-101	Amend
R18-11-301	Amend

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

Authorizing statute: A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)

Implementing statute: A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223

4. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State.

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2089, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-107

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 28414, Issue Date: September 6, 2024, Issue Number: 36, File number: R24-165.

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

Name: Matthew O'Donnell

Title: Attorney

Division: Office of Administrative Counsel

Address: Arizona Department of Environmental Quality
Office of Administrative Counsel
1110 W. Washington Street
Phoenix, AZ 85007

Telephone: (602) 809-4869

Email: waterqualityrulecorrections@azdeq.gov

Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to water quality standards. The objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 11, as well as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The purpose of Chapter 11, Articles 1 and 3 is to establish standards for surface waters and reclaimed water.

The proposed amendments to Title 18, Chapter 11, Articles 1 and 3 are limited to correcting errors and amending references that are outdated.

The proposed amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conducting an expedited rulemaking only if the rulemaking "does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]". The applicable requirements relied upon in this rulemaking include the following: (A)(3) "Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect" and (A)(6) "Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government". This proposed expedited rulemaking is expected to fix and clarify rules without adding regulatory burden because this rulemaking consists only of minor spelling and grammar corrections and updates to reflect statute/rule renumbering and repeal. Indeed, this cleanup will serve to reduce regulatory burden by removing confusion and enhancing public understanding of the rules.

Section-by-Section Explanation of Proposed Rules:

R18-11-101	Amend to update definitions section: Add reference to A.R.S. § 49-255 to Definition (9); update A.R.S. reference in definition (33) to reflect renumbering; miscellaneous spelling and grammar changes to (51);
R18-11-301	Amend to update definitions section: Update references to A.R.S, A.A.C. to reflect renumbering; miscellaneous spelling and grammar changes.

8. 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

9. 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

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This proposed expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

ADEQ did not receive comments regarding this proposed rulemaking.

13. 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:

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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 changes to these rules do 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:

The Clean Water Act (CWA) [33 U.S.C. § 1251, *et seq.*], as amended, is applicable to the subject of this rule. The changes to the rule proposed in this rulemaking are not more stringent than is required by federal law.

c. Whether a person submitted an analysis 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 under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

15. 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) state where the text was changed between the emergency and the final expedited rulemaking package:

The rules were not previously made as an emergency rule.

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Section
R18-11-101. Definitions

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Section
R18-11-301. Definitions

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 coldwater 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 warmwater 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 A.R.S. § 49-255, *et seq.*, and 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 longterm 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, that consists of a point source discharge without which the surface water would be ephemeral. 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 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:

$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3)\ldots(Y_n)}$$

25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO3) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.
27. "Intermittent water" means a surface water or portion of surface water that flows continuously 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 another surface source, such as melting 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)~~ A.R.S § 49-201(35).
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 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 “WOTUS” as defined in A.R.S. § 49-201(53).
45. “Total nitrogen” means the sum of the concentrations of ammonia (NH3), ammonium ion (NH4+), nitrite (NO2), and nitrate (NO3), 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~~ a De ~~Minimus~~ Minimis General Permit, or
    c. Other allowable non-stormwater discharges permitted under ~~the~~ a Construction General Permit or ~~the~~ Multi-sector General Permit, or Stormwater discharges from a municipal separate 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.

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

“Direct reuse” has the meaning prescribed in ~~R18-9-701(1)~~R18-9-A701(2).

“Disinfection” means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

“Filtration” means a treatment process that removes particulate matter from wastewater by passage through porous media.

“Gray water” means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

“Industrial wastewater” means wastewater generated from an industrial process.

“Landscape impoundment” means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

“NTU” means ~~nepholometric~~ nephelometric turbidity unit.

“On-site wastewater treatment facility” has the meaning prescribed in ~~A.R.S. § 49-201(24)~~ A.R.S. § 49-201(29).

“Open access” means that access to reclaimed water by the general public is uncontrolled.

“Reclaimed water” has the meaning prescribed in ~~A.R.S. § 49- 201(31)~~ A.R.S. § 49- 201(41).

“Recreational impoundment” means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

“Restricted access” means that access to reclaimed water by the general public is controlled.

“Secondary treatment” means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

“Sewage” means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Arizona Administrative CODE
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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

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, 2023 through September 30, 2023

Questions about these rules? Contact:

Department: Arizona Department of Environmental Quality
Address: 1110 W. Washington St.
Phoenix, AZ 85007
Website: www.azdeq.gov
Name: Jon Rezabek
Telephone: (602) 771-8219
Email: rezabek.jon@azdeq.gov

The release of this Chapter in Supp. 23-3 replaces Supp. 22-4, 1-99 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. 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 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, 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.

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.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Authority: A.R.S. §§49-202(A), 49-203(A)(1)

Supp. 23-3

CHAPTER TABLE OF CONTENTS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Tables in Article 1, Appendix A have been updated and now include historical notes (Supp. 16-4).

Article 1, consisting of Appendices A through C, repealed April 24, 1996 (Supp. 96-2).

Article 1, consisting of Section R18-11-103, reserved effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-105 and R18-11-106, and Appendices A and B, adopted April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 and R18-11-102, R18-11-104, R18-11-107 through R18-11-109, R18-11-111 through R18-11-113, R18-11-115, R18-11-117 and R18-11-118, R18-11-120 and R18-11-121, amended effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 through R18-11-121 and Appendices A through C, adopted effective February 18, 1992 (Supp. 92-1).

Article 1, consisting of Section R18-11-101, repealed effective February 18, 1992 (Supp. 92-1).

Article 1 consisting of Section R9-21-101 renumbered as Article 1, Section R18-11-101 (Supp. 87-3).

ARTICLE 2. WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS

Article 2, consisting of Sections R18-11-201 through R18-11-205, adopted effective February 18, 1992 (Supp. 92-1).

Article 2, consisting of Sections R18-11-201 through R18-11-214 and Appendices A and B, repealed effective February 18, 1992 (Supp. 92-1).

Article 2 consisting of Sections R9-21-201 through R9-21-214 and Appendices A and B renumbered as Article 2, Sections R18-11-201 through R18-11-214 and Appendices A and B (Supp. 87-3).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Article 3, consisting of Sections R18-11-301 through R18-11-309 and Table A, adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Article 3 heading repealed effective April 24, 1996 (Supp. 96-2).

Article 3, consisting of Sections R18-11-301 through R18-11-304 repealed effective February 18, 1992 (Supp. 92-1).

Article 3 consisting of Sections R9-21-301 through R9-21-304 renumbered as Article 3, Sections R18-11-301 through R18-11-304 (Supp. 87-3).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

New Article 5 consisting of Sections R18-11-501 through R18-11-504 and Section R18-11-506 adopted effective October 22, 1987.

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

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.
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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 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 "WOTUS" as defined in A.R.S. § 49-201(53).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH3), ammonium ion (NH4+), nitrite (NO2), and nitrate (NO3), 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.

Historical Note

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 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 November 9, 2019 (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-102. Applicability

A. The water quality standards prescribed in this Article apply to 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 a 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 that is not a surface water or is located in an area that once was a surface water but is no longer a surface water because it has been and remains legally converted, 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 pit associated with dewatering activity,
   g. Pond holding water that has come into contact with a process or product and that is being held for recycling,
   h. Spill or upset 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.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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).

R18-11-103. Repealed

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Repealed effective April 24, 1996 (Supp. 96-2).

R18-11-104. Designated Uses

A. The Director shall adopt or remove a designated use or subcategory of a designated use by rule.

B. Designated uses of a surface water may include full-body contact, partial-body contact, domestic water source, fish consumption, aquatic and wildlife (cold water), aquatic and wildlife (warm water), aquatic and wildlife (ephemeral), aquatic and wildlife (effluent-dependent water), agricultural irrigation, and agricultural livestock watering. The designated uses for specific surface waters are listed in Appendix B of this Article.

C. Numeric water quality criteria to maintain and protect water quality for the designated uses are prescribed in Appendix A, R18-11-109, R18-11-110, and R18-11-112. Narrative water quality standards to protect all surface waters are prescribed in R18-11-108.

D. If a surface water has more than one designated use listed in Appendix B, the most stringent water quality criterion applies.

E. The Director shall revise the designated uses of a 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 Appendix B.

F. In designating uses of a surface water and in establishing water quality criteria to protect the designated uses, the Director shall take into consideration the applicable water quality standards for downstream surface waters and shall ensure that the water quality standards that are established for an upstream surface water also provide for the attainment and maintenance of the water quality standards of downstream surface waters.

G. A use attainability analysis shall be conducted prior to removal of a designated use or adoption of a subcategory of a designated use that requires less stringent water quality criteria.

H. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria, provided the designated use is not an existing use and it is demonstrated through a use attainability analysis that attaining the designated use is not feasible for any of the following reasons:

1. A naturally-occurring pollutant concentration prevents the attainment of the use;
2. A natural, ephemeral, intermittent, or low-flow condition or water level prevents the attainment of the use;
3. 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;
4. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
5. 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; or
6. Controls more stringent than those required by § 301 (b) and § 306 of the Clean Water Act [33 U.S.C. § 1311 and § 1316] are necessary to attain the use and implementation

of the controls would result in substantial and widespread economic and social impact.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

R18-11-105. Tributaries; Designated Uses

The following water quality standards apply to a surface water that is not listed in Appendix B but that is a tributary to a listed surface water.

1. The aquatic and wildlife (ephemeral) and partial-body contact standards apply to an unlisted tributary that is an ephemeral water.
2. The aquatic and wildlife (cold water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is above 5000 feet in elevation.
3. The aquatic and wildlife (warm water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is below 5000 feet in elevation.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Section heading amended per instructions of the Department of Environmental Quality, August 9, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

R18-11-106. Net Ecological Benefit

A. The Director may, by rule, modify a water quality standard on the ground that there is a net ecological benefit associated with the discharge of effluent to support or create a riparian and aquatic habitat in an area where water resources are limited. The Director may modify a water quality standard for a pollutant if it is demonstrated that:

1. The discharge of effluent creates or supports an ecologically valuable aquatic, wetland, or riparian ecosystem in an area where these resources are limited;
2. The ecological benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with the elimination of the discharge of effluent;
3. The cost of treatment to achieve compliance with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent to the surface water. The discharger shall demonstrate that it is feasible to eliminate the discharge of effluent that creates or supports the ecologically valuable aquatic, wetland, or riparian ecosystem;
4. The discharge of effluent to the surface water will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water;
5. All practicable point source discharge control programs, including local pretreatment, waste minimization, and source reduction programs are implemented; and
6. The discharge of effluent does 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.

B. The Director shall not modify a water quality criterion for a pollutant to be less stringent than a technology-based effluent limitation that applies to the discharge of that effluent. The discharge of effluent shall, at a minimum, comply with applicable technology-based effluent limitations.

Historical Note

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 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-107. Antidegradation

A. The Director shall, using R18-11-107.01 and this Section, determine whether there is degradation of water quality in a surface water on a pollutant-by-pollutant basis.

B. Tier 1: The level of water quality necessary to support an existing use shall be maintained and protected. No degradation of existing water quality is permitted in a surface water where the existing water quality does not meet the applicable water quality standards.

C. Tier 2: Where existing water quality in a surface water is better than the applicable water quality standard the existing water quality shall be maintained and protected. The Director may allow degradation of existing water quality in the surface water, if the Director makes all of the following findings:

1. The water quality necessary for existing uses is fully protected and water quality is not lowered to a level that does not comply with applicable water quality standards,
2. The highest statutory and regulatory requirements for new and existing point sources are achieved,
3. All cost-effective and reasonable best management practices for nonpoint source pollution control are implemented, and
4. Allowing lower water quality is necessary to accommodate important economic or social development in the area where the surface water is located.

D. Tier 3: Existing water quality shall be maintained and protected in a surface water that is classified as an OAW under R18-11-112. Degradation of an OAW under subsection (C) is prohibited.

E. The Director shall implement this Section in a manner consistent with § 316 of the Clean Water Act [33 U.S.C. 1326] if a potential water quality impairment associated with a thermal discharge is involved.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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).

R18-11-107.01. Antidegradation Criteria

A. Tier 1 antidegradation protection.

1. Tier 1 antidegradation protection applies to the following surface waters:
   a. A surface water listed on the 303(d) list for the pollutant that resulted in the listing,
   b. An effluent dependent water,
   c. An ephemeral water,
   d. An intermittent water, and
   e. A canal listed in Appendix B.
2. A regulated discharge shall not cause a violation of a surface water quality standard or a wasteload allocation in a total maximum daily load approved by EPA.

3. Except as provided in subsections (E) and (F), Tier 1 antidegradation review requirements are satisfied for a point-source discharge regulated under an individual AZPDES permit to an ephemeral water, effluent dependent water, intermittent water, or a canal listed in Appendix B, if water quality-based effluent limitations designed to achieve compliance with applicable surface water quality standards are established in the permit and technology-based requirements of the Clean Water Act for the point source discharge are met.

B. Tier 2 antidegradation protection.

1. Tier 2 antidegradation protection applies to a perennial water with existing water quality that is better than applicable water quality standards. A perennial water that is not listed in subsection (A)(1) nor classified as an OAW under A.A.C. R18-9-112(G) has Tier 2 antidegradation protection for all pollutants of concern.
2. A regulated discharge that meets the following criteria, at critical flow conditions, does not cause significant degradation:
   a. The regulated discharge consumes less than 20 percent of the available assimilative capacity for each pollutant of concern, and
   b. At least 50 percent of the assimilative capacity for each pollutant of concern remains available in the surface water for each pollutant of concern.
3. Antidegradation review. Any person proposing a new or expanded regulated discharge under an individual AZPDES permit that may cause significant degradation shall provide ADEQ with the following information:
   a. Baseline characterization. A person seeking authorization to discharge under an individual AZPDES permit to a perennial water shall provide baseline water quality data on pollutants of concern where no data exists or there are insufficient data to characterize baseline water quality and to determine available assimilative capacity. A discharger shall characterize baseline water quality at a location upstream of the proposed discharge location;
   b. Alternative analysis.
      i. The person seeking authorization for the discharge shall prepare and submit a written analysis of alternatives to the discharge. The analysis shall provide information on all reasonable, cost-effective, less-degrading or nondegrading discharge alternatives. Alternatives may include wastewater treatment process changes or upgrades, pollution prevention measures, source reduction, water reclamation, alternative discharge locations, groundwater recharge, land application or treatment, local pretreatment programs, improved operation and maintenance of existing systems, seasonal or controlled discharge to avoid critical flow conditions, and zero discharge;
      ii. The alternatives analysis shall include cost information on base pollution control measures associated with the regulated discharge and cost information for each alternative;
      iii. The person shall implement the alternative that is cost-effective and reasonable, results in the least degradation, and is approved by the Director. An alternative is cost-effective and reasonable if treatment costs associated with the alternative are less than a 10 percent increase above the cost of base pollution control measures;
      iv. For purposes of this subsection, "base pollution control measures" are water pollution control measures required to meet technology-based requirements of the Clean Water Act and water quality-based effluent limits designed to achieve compliance with applicable water quality standards; and
   c. Social and economic justification. The person shall demonstrate to the Director that significant degradation is necessary to accommodate important economic or social development in the local area. The person seeking authorization for the discharge shall prepare a written social and economic justification that includes a description of the following:
      i. The geographic area where significant degradation of existing water quality will occur;
      ii. The current baseline social and economic conditions in the local area;
      iii. The net positive social and economic effects of development associated with the regulated discharge and allowing significant degradation;
      iv. The negative social, environmental, and economic effects of allowing significant degradation of existing water quality; and
      v. Alternatives to the regulated discharge that do not significantly degrade water quality yet may yield comparable social and economic benefits.
4. For purposes of this Section, the term "pollutant of concern" means a pollutant with either a numeric or narrative water quality standard.
5. Public participation. The Director shall provide public notice and an opportunity to comment on an antidegradation review under subsection (B)(3) and shall provide an opportunity for a public hearing under A.A.C. R18-9-A908(B).

C. Tier 3 antidegradation protection.

1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G).
2. A new or expanded point-source discharge directly to an OAW is prohibited.
3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to ADEQ that the regulated discharge will not degrade existing water quality in the downstream OAW.
4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires a determination by the Director to ensure that existing water quality is maintained and protected and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less and are not regularly occurring. The form of such a determination shall be as follows:
   a. For Corps-issued § 404 permits, an individual § 401 water quality certification.
   b. For Director-issued § 404 permits, a § 404 permit action, wherein the Director shall conduct a water quality evaluation as a part of the state's requirements for issuing § 404 permits and in accordance with this Section.

D. Antidegradation review of a § 404 permit shall be conducted as follows:

1. For a Corps-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404 permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.
2. For a Director-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a general § 404 permit as a part of its determination whether to issue a general permit in accordance with state requirements for issuing a § 404 general permit and with this Section. The Director shall conduct the antidegradation review of an individual § 404 permit as part of the § 404 permit action in accordance with state requirements for issuing a § 404 permit and in accordance with this Section.

E. Antidegradation review of an AZPDES stormwater permit. An individual stormwater permit for a municipal separate storm sewer system (MS4) meets antidegradation requirements if the permittee complies with the permit, including developing a stormwater management plan containing controls that reduce the level of pollutants in stormwater discharges to the maximum extent practicable.

F. Antidegradation review of a general permit. The Director shall conduct the antidegradation review of a regulated discharge authorized by a general permit at the time the general permit is issued or renewed. A person seeking authorization to discharge under a general permit is not required to undergo an individual antidegradation review at the time the Notice of Intent is submitted unless the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters.

Historical Note

New Section made 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 November 9, 2019 (Supp. 19-3).

R18-11-108. Narrative Water Quality Standards

A. A 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 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 surface water from natural background levels of color.

B. A 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 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.

D. A surface water shall not contain solid waste such as refuse, rubbish, demolition or construction debris, trash, garbage, motor vehicles, appliances, or tires.

E. A wadeable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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).

R18-11-108.01. Narrative Biological Criteria for Wadeable, Perennial Streams

A. The narrative biological criteria in this Section apply to a wadeable, perennial stream with either an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.

B. The biological standard in R18-11-108(E) is met when a bioassessment result, as measured by the Arizona Index of Biological Integrity (IBI), for cold or warm water is:

1. Greater than or equal to the 25th percentile of reference condition, or
2. Greater than the 10th percentile of reference condition and less than the 25th percentile of reference condition and a verification bioassessment result is greater than or equal to the 25th percentile of reference condition.

C. Arizona Index of Biological Integrity (IBI) scores:

Bioassessment Result	Index of Biological Integrity Scores	
	A&Wc	A&Ww
Greater than or equal to the 25th percentile of reference condition	≥52	≥50
Greater than the 10th and less than the 25th percentile of reference condition	46 - 51	40 - 49

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.02. Narrative Bottom Deposit Criteria for Wadeable, Perennial Streams

A. The narrative bottom deposit criteria in this Section apply to wadeable, perennial streams with an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.

B. The narrative water quality standard for bottom deposits at R18-11-108(A)(1) is met when:
1. The percentage of fine sediments in the riffle habitats of a wadeable, perennial stream with an A&Wc designated use, as determined by a riffle pebble count, is less than or equal to 30 percent.
2. The percentage of fine sediments in all stream habitats of a wadeable, perennial stream with an A&Ww designated use, as determined by a reach level pebble count, is equal to or less than 50 percent.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.03. Narrative Nutrient Criteria for Lakes and Reservoirs

A. The narrative nutrient criteria in this Section apply to those lakes and reservoirs categorized in Appendix B.

B. The narrative water quality standard for nutrients at R18-11-108(A)(6) is met when, based on a minimum of two lake sample events conducted during the peak season based on lake productivity, the results show an average chlorophyll-*a* value below the applicable threshold for designated use and lake and reservoir category in subsection (D).
1. The mean chlorophyll-*a* concentration is less than the lower value in the target range chlorophyll-*a* for the lake and reservoir category, or
2. The mean chlorophyll-*a* concentration is within the target range for the lake and reservoir category and:
   a. The mean blue green algae count is at or below 20,000 per milliliter, and
   b. The blue green algae count is less than 50 percent of the total algae count, and
   c. There is no evidence of nutrient-related impairments such as:
      i. An exceedance of dissolved oxygen or pH standards;
      ii. A fish kill coincident with a dissolved oxygen or pH exceedance;
      iii. A fish kill or other aquatic organism mortality coincident with algal toxicity;
      iv. Secchi depth is less than the lower value prescribed for the lake and reservoir category;
      v. A nuisance algal bloom is present in the limnetic portion of the lake or reservoir; or
      vi. The concentration of total phosphorous, total nitrogen, or total Kjehldal nitrogen (TKN) is greater than the upper value in the range prescribed for the lake and reservoir category; or
3. For a shallow lake. In addition to meeting the mean chlorophyll-*a* concentrations in subsections (B)(1) or (2), submerged aquatic vegetation covers 50 percent or less of the lake bottom and there is less than a 5 mg/L swing in diel-dissolved oxygen concentration measured within the photic zone.

C. The following threshold ranges apply during the peak season for lake productivity:
1. Warm water lakes peak season, April – October;
2. Cold water lakes peak season, May – September.

D. The following table lists the numeric targets for lakes and reservoirs.

NUMERIC TARGETS FOR LAKES AND RESERVOIRS

Designated Use	Lake Category	Chl-*a* (µg/L)	Secchi Depth (m)	Total Phosphorus (µg/L)	Total Nitrogen (mg/L)	Total Kjehldal Nitrogen (TKN) (mg/L)	Blue-Green Algae (per ml)	Blue-Green Algae (% of total count)	Dissolved Oxygen (mg/L)	pH (SU)
FBC and PBC	Deep	10-15	1.5-2.5	70-90	1.2-1.4	1.0-1.1	20,000			6.5-9.0
	Shallow	10-15	1.5-2.0	70-90	1.2-1.4	1.0-1.1				
	Igneous	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
	Sedimentary	20-30	1.5-2.0	100-125	1.5-1.7	1.2-1.4				
	Urban	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
A&Wc	All	5-15	1.5-2.0	50-90	1.0-1.4	0.7-1.1		<50	7 (top m)	6.5-9.0
A&Ww	All (except urban lakes)	25-40	0.8-1.0	115-140	1.6-1.8	1.3-1.6			6 (top m)	
	Urban	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				
A&Wedw	All	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				6.5-9.0
DWS	All	10-20	0.5-1.5	70-100	1.2-1.5	1.0-1.2	20,000			5.0-9.0

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-109. Numeric Water Quality Standards

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):

E. coli	**FBC**	**PBC**
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for pH are expressed in standard units:

pH	**DWS**	**FBC, PBC, A&W [1]**	**AgI**	**AgL**
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

Footnotes:
1. "1" Includes A&Wc, A&Ww, A&Wedw, and A&We.

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww	**A&Wedw**	**A&Wc**

3.0° C	3.0° C	1.0° C

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:

A&Wc	A&Ww
25	80

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.

E. Dissolved oxygen. A 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:

Designated Use	Single sample minimum concentration in mg/L
A&Ww	6.0
A&Wc	7.0
A&W edw for a sample taken from three hours after sunrise to sunset	3.0
A&W edw for a sample taken from sunset to three hours after sunrise	1.0

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. Nutrient criteria. The following are water quality standards for total phosphorus and total nitrogen (expressed in milligrams per liter (mg/L)) that apply to the surface waters listed below. A minimum of 10 samples, each taken at least 10 days apart in a consecutive 12-month period, are required to determine a 90th percentile. Not more than 10 percent of the samples may exceed the 90th percentile value listed below. The Director will apply these water quality standards for total phosphorus and total nitrogen to the surface waters listed below, and to their perennial tributaries, if listed. The Director may also apply these total phosphorus and total nitrogen standards to any source discharging to any tributary (ephemeral, intermittent, effluent dependent water, or perennial) of the surface waters listed below, if necessary to protect nutrient water quality in the listed surface water, based on the volume, frequency, magnitude and duration of the discharge, and distance to the downstream surface water listed below:

1. Verde River and its perennial tributaries from the Verde headwaters to Bartlett Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.30	1.00
Total nitrogen	1.00	1.50	3.00

2. Black River, Tonto Creek and their perennial tributaries for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.20	0.80
Total nitrogen	0.50	1.00	2.00

3. Salt River and its perennial tributaries above Roosevelt Lake for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.12	0.30	1.00
Total nitrogen	0.60	1.20	2.00

4. Salt River below Stewart Mountain Dam to its confluence with the Verde River:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.05	–	0.20
Total nitrogen	0.60	–	3.00

5. Little Colorado River and its perennial tributaries upstream from:
   a. The headwaters to River Reservoir,
   b. South Fork of Little Colorado River at 34°00’49”/109°24’18” to above South Fork Campground at 34°04’49”/109°24’18”, and
   c. The headwaters of Water Canyon Creek to the Apache-Sitgreaves National Forest boundary:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.08	0.10	0.75
Total nitrogen	0.60	0.75	1.10

6. From the Little Colorado River and State Route 260 at 34°06’39”/109°18’55” to Lyman Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.20	0.30	0.75
Total nitrogen	0.70	1.20	1.50

7. Colorado River at the Northern International Boundary near Morelos Dam:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	–	0.33	–
Total nitrogen	–	2.50	–

8. Oak Creek from its headwaters at 35°01'30"/111°44'12" to its confluence with the Verde River and the West Fork of Oak Creek from its headwaters at 35°02'44"/111°54'48" to its confluence with Oak Creek.

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.1	0.25	0.30
Total nitrogen	1.00	1.50	2.50

9. No discharge of wastewater to Show Low Creek or its perennial tributaries upstream of and including Fools Hollow Lake shall exceed 0.16 mg/L total phosphates as P.
10. No discharge of wastewater to the San Francisco River or its perennial tributaries upstream of Luna Lake Dam shall exceed 1.0 mg/L total phosphates as P.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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 August 2, 2016 (Supp. 16-4). Amended by final

rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-110. Salinity Standards for the Colorado River

A. The flow-weighted average annual salinity in the lower main stem of the Colorado River shall not exceed the following criteria:

Location	Total Dissolved Solids
Below Hoover Dam	723 mg/L
Below Parker Dam	747 mg/L
At Imperial Dam	879 mg/L

B. The plan of implementation contained in the "2014 Review, Water Quality Standards for Salinity, Colorado River System," approved October 2014, is incorporated by reference to preserve the basin-wide approach to salinity control developed by the Colorado River Basin Salinity Control Forum and to ensure compliance with the numeric criteria for salinity in subsection (A). This material does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the Colorado River Basin Salinity Control Forum, 106 West 500 South, Suite 101, Bountiful, Utah 84010-6232 or at http://www.coloradoriversalinity.org/.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). 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 August 2, 2016 (Supp. 16-4).

R18-11-111. 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, 40 CFR 136.3, or an alternative analytical 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.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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).

R18-11-112. Outstanding Arizona Waters

A. The Director shall classify a surface water as an outstanding Arizona water (OAW) by rule.

B. The Director may adopt, under R18-11-115, a site-specific standard to maintain and protect existing water quality in an OAW.

C. Any person may nominate a surface water for classification as an OAW by filing a nomination with the Director. The nomination shall include:

1. A map and a description of the surface water;
2. A written statement in support of the nomination, including specific reference to the applicable criteria for an OAW classification prescribed in subsection (D);
3. Supporting evidence demonstrating that the criteria prescribed in subsection (D) are met; and
4. Available water quality data relevant to establishing the baseline water quality of the proposed OAW.

D. The Director may classify a surface water as an OAW based upon the following criteria:

1. The surface water is a perennial or intermittent water;
2. The surface water is in a free-flowing condition. For purposes of this subsection, "in a free-flowing condition" means that a surface water does not have an impoundment, diversion, channelization, rip-rapping or other bank armor, or another hydrological modification within the reach nominated for an OAW classification;
3. The surface water has good water quality. For purposes of this subsection, "good water quality" means that the surface water has water quality that meets or is better than applicable surface water quality standards. A surface water that is listed as impaired under R18-11-604(E) is ineligible for OAW classification; and
4. The surface water meets one or both of the following conditions:
   a. The surface water is of exceptional recreational or ecological significance because of its unique attributes, such as the geology, flora and fauna, water quality, aesthetic value, or the wilderness characteristic of the surface water;
   b. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species' maintenance and propagation or the surface water provides critical habitat for the threatened or endangered species. An endangered or threatened species is identified in "Endangered and Threatened Wildlife," 50 CFR 17.11 (revised 2005), and "Endangered and Threatened Plants," 50 CFR 17.12 (revised 2005). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the National Archives and Records Administration at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.

E. The Director shall hold at least one public meeting in the local area of a surface water that is nominated for classification as an OAW to solicit public comment on the nomination.

F. The Director shall consider the following factors when deciding whether to classify a surface water as an OAW:

1. Whether there is the ability to manage the surface water and its watershed to maintain and protect existing water quality;
2. The social and economic impact of Tier 3 antidegradation protection;
3. The public comments in support of, or in opposition to, an OAW classification;
4. The timing of the nomination relative to the triennial review of surface water quality standards;
5. The consistency of an OAW classification with applicable water quality management plans; and

6. Whether the nominated surface water is located within a national or state park, national monument, national recreation area, wilderness area, riparian conservation area, area of critical environmental concern, or it has another special use designation (for example, Wild and Scenic River).

G. The following surface waters are classified as OAWs:

1. The West Fork of the Little Colorado River, from its headwaters to Government Springs (approximately 9.1 river miles);
2. Oak Creek, from its headwaters to its confluence with the Verde River (approximately 50.3 river miles);
3. West Fork of Oak Creek, from its headwaters to its confluence with Oak Creek (approximately 15.8 river miles);
4. Peeples Canyon Creek, from its headwaters to its confluence with the Santa Maria River (approximately 8.1 river miles);
5. Burro Creek, from its headwaters to its confluence with Boulder Creek (approximately 29.5 miles);
6. Francis Creek, from its headwaters to its confluence with Burro Creek (approximately 22.9 river miles);
7. Bonita Creek, from its boundary of the San Carlos Indian Reservation to its confluence with the Gila River (approximately 14.7 river miles);
8. Cienega Creek, from its confluence with Gardner Canyon to the USGS gaging station (#09484600) (approximately 28.3 river miles);
9. Aravaipa Creek, from its confluence with Stowe Gulch to the downstream boundary of the Aravaipa Canyon Wilderness Area (approximately 15.5 river miles);
10. Cave Creek, from its headwaters to the Coronado National Forest boundary (approximately 10.4 river miles);
11. South Fork of Cave Creek, from its headwaters to its confluence with Cave Creek (approximately 8.6 river miles);
12. Buehman Canyon Creek, from its headwaters to its confluence with unnamed tributary at 32°24'31"/110°32'08" (approximately 9.8 river miles);
13. Lee Valley Creek, from its headwaters to Lee Valley Reservoir (approximately 1.6 river miles);
14. Bear Wallow Creek, from its headwaters to the boundary of the San Carlos Indian Reservation (approximately 4.25 river miles);
15. North Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
16. South Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
17. Snake Creek, from its headwaters to its confluence with the Black River (approximately 6.2 river miles);
18. Hay Creek, from its headwaters to its confluence with the West Fork of the Black River (approximately 5.5 river miles);
19. Stinky Creek, from the White Mountain Apache Indian Reservation boundary to its confluence with the West Fork of the Black River (approximately 3.0 river miles);
20. KP Creek, from its headwaters to its confluence with the Blue River (approximately 12.7 river miles);
21. Davidson Canyon, from the unnamed spring at 31°59'00"/110°38'49" to its confluence with Cienega Creek; and
22. Fossil Creek, from its headwaters at the confluence of Sandrock and Calf Pen Canyons above Fossil Springs to its confluence with the Verde River (approximately 17.2 river miles).

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Added "water quality standards" to R18-11-112, previously omitted 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 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-113. Effluent-Dependent Waters

A. The Director shall classify a surface water as an effluent-dependent water by rule.

B. The Director may adopt, under R18-11-115, a site-specific water quality standard for an effluent-dependent water.

C. Any person may submit a petition for rule adoption requesting that the Director classify a surface water as an effluent-dependent water. The petition shall include:

1. A map and a description of the surface water;
2. Information that demonstrates that the surface water consists of a point source discharge of wastewater; and
3. Information that demonstrates that, without a point source discharge of a wastewater, the receiving water is an ephemeral water.

D. The Director shall use the water quality standards that apply to an effluent-dependent water to derive water quality-based effluent limits for a point source discharge of wastewater to an ephemeral water.

E. The Director may use aquatic and wildlife (edw) acute standards only to derive water quality based effluent limits for a sporadic, infrequent, or emergency point source discharge to an ephemeral water or to an effluent-dependent water. The Director shall consider the following factors when deciding whether to apply A&Wedw (acute) standards:

1. The amount, frequency, and duration of the discharge;
2. The length of time water may be present in the receiving water;
3. The distance to a downstream water with aquatic and wildlife chronic standards; and
4. The likelihood of chronic exposure to pollutants.

F. The Director may establish alternative water quality-based effluent limits in an AZPDES permit based on seasonal differences in the discharge.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective December 18, 1992 (Supp. 92-4). Amended 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).

R18-11-114. Mixing Zones

A. The Director may establish a mixing zone for a point source discharge to a surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited in an ephemeral water or 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 a 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.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-115. 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 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 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 Appendix A;
3. Resident aquatic organisms that occur in a 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 Appendix A;
4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in Appendix A. "Natural background" means the concentration of a pollutant in a 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 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. Uses one of the following procedures, as defined by the most recent EPA guidance documents:
      i. The recalculation procedure,
      ii. The water effects ratio for metals,
      iii. The streamlined water effects ratio, or
      iv. The Biotic ligand model.
   d. Demonstrates that all designated uses are protected.
2. Alternatively, a study outline submitted for the Director's approval must contain 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. Modeling approaches include Better Assessment Science Integrating Source and Nonpoint Sources (Basins), Hydrologic Simulation Program-Fortran (HSPF), and Hydrologic Engineering Center (HEC) programs developed by the U.S. Army Corps of Engineers.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Section repealed by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). New Section made 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 August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-116. Resource Management Agencies

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.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-117. Canals and Urban Park Lakes

A. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified in Appendix B. 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 in Appendix B.

B. The discharge of lubricating oil associated with the start-up of well pumps that discharge to canals is not a violation of R18-11-108(B).

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-118. Dams and Flood Control Structures

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. Nothing in this Article requires the release of water from a dam or a flood control structure.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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).

R18-11-119. Natural background

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is not caused by human activity but is due solely to naturally-occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1).

R18-11-120. Enforcement of Non-permitted Discharges

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.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-121. 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 com-

pliance. The permittee shall demonstrate that all requirements under § 301(b) and § 306 of the Clean Water Act [33 U.S.C. 1311(b) and 1316] are achieved and 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.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended 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 August 2, 2016 (Supp. 16-4).

R18-11-122. 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 discussion of the discharge control technologies that are available for achieving compliance with the water quality standard for which a variance is sought.
5. Documentation that more advanced treatment technology than applicable technology-based effluent limitations is necessary to achieve compliance with the water quality standard for which a variance is sought.
6. 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.
7. Documentation that the proposed term is only as long as necessary to achieve the highest attainable condition.
8. Documentation that is appropriate to the type of use to which the variance would apply as follows:
   a. For a water quality standard variance to a use specified in Clean Water Act § 101(a)(2), documentation must include 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;
      vi. That installation and operation of each of the available discharge technologies more advanced than those required to comply with technology-based effluent limitations to achieve compliance with the water quality standard would result in substantial and widespread economic and social impact; or
      vii. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
   b. For a water quality standard variance to a use other than those uses specified in Clean Water Act § 101(a)(2), documentation must justify how consideration and value of the water subject to the use appropriately supports the variance and term. A demonstration consistent with (B)(8)(a) of this Section may be used to satisfy this requirement.
9. For a waterbody segment(s)-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
   a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
   b. If any variance pursuant to subsection (B)(9)(a) previously applied to the water body or waterbody seg-

ment(s), documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the water quality variance and the water quality progress achieved.

10. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
    a. Identification of the permittee subject to the variance;
    b. For an existing point source discharge, a detailed description of the existing discharge control technologies that are used to achieve compliance with applicable water quality standards. For a new point source discharge, a detailed description of the proposed discharge control technologies that will be used to achieve compliance with applicable water quality standards; and
    c. Documentation that the existing or proposed discharge control technologies will comply with applicable technology-based effluent limitations.

C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
4. The likelihood of adverse human health effects.

D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.

E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(8)(a)(vii). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
2. The interim effluent condition that reflects the greatest pollutant reduction achievable; or
3. If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of the issuance of the variance, and the adoption and implementation of a Pollutant Minimization Program.

F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.

G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.

H. The Director may not grant a variance for a point source discharge to an OAW listed in R18-11-112(G).

I. Each variance established by the Director is subject to review and approval by the Regional Administrator.

J. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E). The variance term runs from the approval of the variance by the Regional Administrator.

K. The Director shall reevaluate, in its triennial review, 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. 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 in its triennial review rulemaking.

L. 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.

M. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.

N. The following are discharger-specific variances adopted by the Director:

O. The following are water body and waterbody segment-specific variances adopted by the Director:

Historical Note

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 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-123. Discharge Prohibitions

A. The discharge of wastewater to the following surface waters is prohibited:
1. Sabino Canyon Creek;
2. Vekol Wash, upstream of the Ak-Chin Indian Reservation; and
3. Smith Wash, upstream of the Ak-Chin Indian Reservation.

B. The discharge to Lake Powell of human body wastes and the wastes from toilets and other receptacles intended to receive or retain wastes from a vessel is prohibited.

Historical Note

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).

Appendix A. Numeric Water Quality Standards

Table 1. Water Quality Criteria By Designated Use (see f) Footnotes

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)	Agl (µg/L)	AgL (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550	850	550			
Acrolein	107028	3.5	1.9	467	467	3	3	3	3	3	3			
Acrylonitrile	107131	0.06	0.2	3	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	0.08	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		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	8,800	560			
Benzo[b]fluoranthene	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	1,300	89	10,000	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	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	120,000	6,700			
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333									
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	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	84 T	700 T	700 T	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	50	50
Carbaryl	63252					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	2	11	980	18,000	1,100	18,000	1,100	18,000	1,100			
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2	2.4	0.2	3.2		
Chlorine (total residual)	7782505	4,000		4,000	4,000	19	11	19	11	19	11			
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260	3,800	260			
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800	180,000	9,800			
Chloroform	67663	TTHM See (g)	470	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	560	1267 317	74,667	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		75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	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	19	19									
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	18,667 T	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	0.0002	4	467	1.1	0.001	1.1	0.001	1.1	0.001	1.1	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	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	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	373,333	560	210	2,000	780	2,000	780	6,500		
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	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		70	70									
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	593	190	56,000	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	420	28,000	3,000	1,100	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	0.2	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		560,000	560,000									
Di (2-ethylhexyl) phthalate	117817	6	3	100	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	28	582	3,733	3,733	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		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	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	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		18,667	18,667									
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.09	0.04	0.7	0.004	0.004
Endrin aldehyde	7421934					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						0.01		0.01		0.01			
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7	6	3.7			
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2	45	8.2			
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7,467	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	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	1.8	280	280	1	0.08	1	0.28	1	0.61	11		
Hexachlorocyclopentadiene	77474	50	580	9,800	9,800	3.5	0.3	3.5	0.3	3.5	0.3			
Hexachloroethane	67721	2.5	3.3	100	933	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	0.05	0.49	1.9	1.9									
Iron	7439896						1,000 D		1,000 D		1,000 D			
Isophorone	78591	37	961	1,500	186,667	59,000	43,000	59,000	43,000	59,000	43,000			
Lead	7439921	15 T		15 T	15 T	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	100 T
Malathion	121755	140		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		4,667	4,667		0.03		0.03		0.03			
Methylmercury	22967926		0.3 mg/ kg											
Mirex	2385855	1		187	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	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	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	1,300	850			
p-Nitrophenol	100027					4,100	3,000	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	2,900	200			
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667									
Nonylphenol	104405					28	6.6	28	6.6	28	6.6	28		
Oxamyl	23135220	200		23,333	23,333									
Parathion	56382					0.07	0.01	0.07	0.01	0.07	0.01			
Paraquat	1910425	32		4,200	4,200	100	54	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	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	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	2,710	65,333	65,333									

Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	19	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		
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	0.01	0.005	0.1		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56,000	4,700	3,200	4,700	3,200	4,700	3,200			
Tetrachloroethylene	127184	5	261	9,333	9,333	2,600	280	6,500	680	6,500	680	15,000		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D	700 D	150 D			
Toluene	108883	1,000	201,000	280,000	280,000	8,700	180	8,700	180	8,700	180			
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.7	0.0002	11	0.005	0.005
Tributyltin						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	428,571	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	25	3,733	18,000	12,000	18,000	12,000	18,000	12,000			
Trichloroethylene	79016	5	29	280,000	280	20,000	1,300	20,000	1,300	20,000	1,300			
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25	160	25	3,000		
2,4,5-Trichlorophenoxy pro-prionic 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 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

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 $CaCO_3$, 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 $CaCO_3$.
   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 $CaCO_3$.
   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)

Historical Note

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). Amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 2. Acute Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife coldwater		Aquatic and Wildlife warm water, and edw		Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L.**
20	0.40	20	2.1	20	4.9
100	1.8	100	9.4	100	22
400	6.5	400	34	400	80
$_{e}$(0.9789*LN(Hardness)-3.866)*(1.136672-LN(Hardness)*0.041838)		$_{e}$(0.9789*LN(Hardness)-2.208)*(1.136672-LN(Hardness)*0.041838)		$_{e}$(0.9789*LN(Hardness)-1.363)(1.136672-LN(Hardness)*0.041838)	

Historical Note

Appendix A repealed; new Appendix A, Table 2 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 2 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 2 amended to correct references to footnotes (Supp. 02-4). Appendix A, Table 2 footnotes amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 2 repealed; new Appendix A, Table 2 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 2 repealed; new Table 2 made 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).

Table 3. Chronic Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife coldwater, warmwater, and edw	
Hard. mg/L	**Std. µg/L**
20	0.21
100	0.72
400	2.0
$_{e}$(0.7977*LN(Hardness)-3.909)*(1.101672-LN(Hardness)*0.041838)	

Historical Note

Appendix A, Table 3 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 3 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 3 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 3 repealed; new Table 3 made 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).

Table 4. Water Quality Standards for Dissolved Chromium III

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	152	20	19.8	20	512
100	570	100	74.1	100	1,912
400	1,773	400	231	400	5,950
$_{e}$(0.819*LN(Hardness)+3.7256)*(0.316)		$_{e}$(0.819*LN(Hardness)+0.6848)*(0.86)		$_{e}$(0.819*LN(Hardness)+4.9361) * (0.316)	

Historical Note

Appendix A, Table 4 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 4 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 4 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 4 repealed; new Table 4 made 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).

Table 5. Water Quality Standards for Dissolved Copper

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	2.9	20	2.3	20	5.1
100	13	100	9.0	100	23
400	50	400	29	400	86
$_{e}$(0.9422*LN(Hardness)-1.702)*(0.96)		$_{e}$(0.8545*LN(Hardness)-1.702)*(0.96)		$_{e}$(0.9422*LN(Hardness)-1.1514)*(0.96)	

Historical Note

Appendix A, Table 5 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 5 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 5 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 5 repealed; new Table 5 made 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).

Table 6. Water Quality Standards for Dissolved Lead

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	10.8	20	0.42	20	22.8
100	64.6	100	2.5	100	136.3
400	281	400	10.9	400	592.7
$_{e}$(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))		$_{e}$(1.273*LN(Hardness)-4.705) *(1.46203-(LN(Hardness))*(0.145712))		$_{e}$(1.273*(LN(Hardness))-0.7131) *(1.46203-(LN(Hardness))*(0.145712))	

Historical Note

Appendix A, Table 6 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 6 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 6 renumbered to Table 9; new Table 6 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 6 repealed; new Table 6 made 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).

Table 7. Water Quality Standards for Dissolved Nickel

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	120.0	20	13.3	20	1066
100	468	100	52.0	100	4158
400	1513	400	168	400	13436
$_{e}$(0.846*LN(Hardness)+2.255)*(0.998)		$_{e}$(0.846*LN(Hardness)+0.0584)*(0.997)		$_{e}$(0.846*LN(Hardness)+4.4389)*(0.998)	

Historical Note

Appendix A, Table 7 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 7 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 7 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 7 repealed; new Table 7 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 8. Water Quality Standards for Dissolved Silver

Acute Aquatic and Wildlife coldwater, warmwater, edw, and ephemeral	
Hard. mg/L	**Std. µg/L**
20	0.20
100	3.2
400	34.9
$_{e}$(1.72*LN(Hardness)-6.59)*(0.85)	

Historical Note

Appendix A, Table 8 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 8 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 8 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 8 repealed; new Table 8 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 9. Water Quality Standards for Dissolved Zinc

Acute and Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	30.0	20	284
100	117	100	1112
400	379	400	3599
$_{e}$(0.8473*LN(Hardness)+0.884)*(0.978)		$_{e}$(0.8473*LN(Hardness)+3.1342)*(0.978)	

Historical Note

Appendix A, Table 9 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 9 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 9 renumbered to Table 11; new Table 9 renumbered from Table 6 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 9 repealed; new Table 9 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 10. Water Quality Standards for Pentachlorophenol

Acute Aquatic and Wildlife coldwater, warmwater and edw			Chronic Aquatic and Wildlife coldwater, warmwater and edw			Acute Aquatic and Wildlife ephemeral	
pH	**µg/L**		**pH**	**µg/L**		**pH**	**µg/L**
3	0.16		3	0.1		3	0.66
6	3.3		6	2.1		6	13.5
9	67.7		9	42.7		9	274
$_{e}$(1.005*(pH)-4.83)			$_{e}$(1.005*(pH)-5.29)			$_{e}$(1.005*(pH)-3.4306)	

Historical Note

Appendix A, Table 10 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 10 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 10 renumbered to Table 12; new Table 10 renumbered from Table 11 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 10 repealed; new Table 10 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Present

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.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	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	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	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	11	11	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	9.6	9.6	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	3
7.8	8.1	8.1	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	6.8	6.8	6.6	6	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	5.6	5.6	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	4.6	4.6	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	3.8	3.8	3.7	3.5	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	3.1	3.1	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	2.6	2.6	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	2.1	2.1	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	1.8	1.8	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	0.59	0.54
8.7	1.5	1.5	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
8.8	1.2	1.2	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
8.9	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
9	0.88	0.88	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

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times 10^{0.036\times(20-T)}\right)\right)\right)$$

Historical Note

Appendix A, Table 11 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 11 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 11 renumbered to Table

10; new Table 11 renumbered from Table 9 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 11 repealed; new Table 11 renumbered from Table 25 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater, Unionid Mussels Present

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.

	Temperature (°C)																				
pH	**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
8.8	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
8.9	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
9	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

$$0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN(51.93, 23.12 \times 10^{0.036\times(20-T)})$$

Historical Note

Appendix A, Table 12 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 12 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 12 renumbered to Table 18; new Table 12 renumbered from Table 10 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 12 repealed; new Table 12 renumbered from Table 26 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix A, Table 12 repealed; new Appendix A, Table 12 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present

For the aquatic and wildlife cold and warm water 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.

	Temperature (°C)																							
pH	**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

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Appendix A, Table 13 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 13 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 13 renumbered to Table 15; new Table 13 renumbered from Table 14 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 13 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 13 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, 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.

	Temperature (°C)																
pH	**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	9.3	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	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	6.5	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	5.4	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	4.5	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	3.7	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	2.8	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	2.5	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	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	1.7	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	1.4	1.3	1.2
8.8	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	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(62.15\times 10^{0.036\times(20-T)}\right)\right)\right.$$

Historical Note

Appendix A, Table 14 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 14 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 14 renumbered to Table 13; new Table 14 renumbered from Table 15 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 14 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, 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.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	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
8.1	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
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	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
8.4	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
8.5	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
8.6	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
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN\left(51.93, \left(62.15 \times 10^{0.036\times(20-T)}\right)\right)$$

Historical Note

Appendix A, Table 15 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 15 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 15 renumbered to Table 14; new Table 15 renumbered from Table 13 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 15 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, 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.

	Temperature (°C)																							
pH	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	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
6.6	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
6.7	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
6.8	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
6.9	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
7	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
7.1	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
7.2	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
7.3	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
7.4	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
7.5	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
7.6	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
7.7	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
7.8	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
7.9	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
8	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
8.1	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
8.2	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
8.3	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
8.4	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
8.5	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
8.6	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
8.7	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
8.8	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
8.9	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
9	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

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(7.547 \times 10^{0.028 \times (20 - MAX(T,7))}\right)$$

Historical Note

Appendix A, Table 16 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 16 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 16 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 16 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, 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.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	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
6.6	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
6.7	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
6.8	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
6.9	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
7	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
7.1	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
7.2	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
7.3	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
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times MIN\left(6.920, \left(7.547 \times 10^{0.028\times(20-T)}\right)\right)$$

Historical Note

Appendix A, Table 17 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 17 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 17 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 17 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 18. Repealed

Historical Note

Appendix A, Table 18 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 18 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 18 repealed; new Table 18 renumbered from Table 12 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 18 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 19. Repealed

Historical Note

Appendix A, Table 19 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

Appendix A, Table 19 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 19 renumbered to Table 21; new Table 19 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 19 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 20. Repealed

Historical Note

Appendix A, Table 20 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 20 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 20 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 20 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 21. Repealed

Historical Note

Appendix A, Table 21 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 21 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 21 renumbered to Table 22; new Table 21 renumbered from Table 19 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 21 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 22. Repealed

Historical Note

Appendix A, Table 22 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 22 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 22 renumbered to Table 23; new Table 22 renumbered from Table 21 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 22 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 23. Repealed

Historical Note

Appendix A, Table 23 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 23 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 23 renumbered to Table 24; new Table 23 renumbered from Table 22 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 23 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 24. Repealed

Historical Note

Appendix A, Table 24 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 24 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 24 renumbered to Table 25; new Table 24 renumbered from Table 23 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 24 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 25. Renumbered

Historical Note

Appendix A, Table 25 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 25 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 25 renumbered to Table 26; new Table 25 renumbered from Table 24 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 25 renumbered to Table 11 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 26. Renumbered

Historical Note

Appendix A, Table 26 renumbered from Table 25 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 26 renumbered to Table 12 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

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 Magdelena – 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

		Segment Description and Location (Latitude and	Lake	Aquatic and Wildlife				Human Health				Agricultural	
Watershed	Surface Waters	Longitudes are in NAD 83)	Category	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 Canyon Wash	Headwaters to confluence with Kanab Creek				A&We			PBC				
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	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	Havasu 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	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	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 Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
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	Turquoise Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
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		
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	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 Reservoir	33°59'59"/109°20'43"	Igneous		A&Ww			FBC			FC	AgI	AgL
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	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	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 Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
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	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	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Long Lake, Upper	35°00'08"/111°21'23"	Igneous	A&Wc				FBC			FC		AgL
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	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	Nutrioso Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Paddy Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
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	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	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	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	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	Andorra Wash	Headwaters to confluence with Cave Creek Wash				A&We			PBC				
MG	Antelope Creek	Headwaters to confluence with Martinez 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	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	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww				FBC		FC		AgL
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary			A&We				PBS				AgL
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"	Urban		A&Ww				PBC		FC		
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	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 unnamed tributary at 34°26'09"/ 112°30'32"		A&Wc				FBC			FC	AgI	AgL
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51"52"/112°39'56"			A&Ww			FBC			FC	AgI	AgL
MG	Hassayampa River	Below unnamed tributary 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	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww			FBC			FC		AgL
MG	Martinez 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	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 33°24'44"/ 112°07'59"			A&Ww				PBC		FC		
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River					A&Wedw		PBC		FC	AgI	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	AgI	AgL
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek			A&Ww			FBC			FC	AgI	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 at34°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 downstream					A&Wedw		PBC				
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 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 (OAW)	From unnamed spring to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
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 Tubac Bridge					A&Wedw		PBC				AgL
SC	Santa Cruz River	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 Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River			A&Ww			FBC			FC	AgI	AgL
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, Tohono O'odham and Gila River Indian Reservations				A&We			PBC				
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	AgI	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	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	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 Canyon Creek	Headwaters to confluence with Bass Canyon			A&Ww			FBC			FC		
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	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	AgI	

SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC		DWS	FC	AgI	
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	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	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	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	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	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"		A&Wc				FBC			FC	AgI	AgL
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww			FBC			FC	AgI	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	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	AgI	AgL
SP	San Pedro River	From Buehman canyon to confluence with the Gila River			A&Ww			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	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	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	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 Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River		A&Wc				FBC			FC		AgL
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	Corduroy 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 Reservoir	33°55'47"/109°25'31"	Igneous		A&Ww			FBC			FC		AgL
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 Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
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 River			A&Ww			FBC			FC		
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		FC		
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 Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
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
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.			A&Ww			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	Georges 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 Creek			A&Ww			FBC			FC		
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		DWS	FC		
VR	Bray Creek	Headwaters to confluence with Webber Creek		A&Wc				FBC			FC		AgL
VR	Camp Creek	Headwaters to confluence with the 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 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	AgI	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	AgI	AgL
VR	East Verde River	Headwaters to confluence with Ellison Creek		A&Wc				FBC		DWS	FC	AgI	AgL
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River			A&Ww			FBC		DWS	FC	AgI	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 Government Spring		A&Wc				FBC			FC		AgL
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 to confluence with Oak Creek			A&Ww			FBC			FC	AgI	AgL
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 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				A&We			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				A&We			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

Historical Note

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 August 2, 2016 (Supp. 16-4). Appendix B amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix B amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Appendix C. Site-Specific Standards

Watershed	Surface Water	Surface Water Description & Location	Parameter	Site-Specific Criterion
LC	Rio de Flag (EDW)	Flagstaff WWTP outfall to the confluence with San Francisco Wash	Copper (D)	36 µg/L (A&Wedw)
CL	Yuma East Wetlands	From inlet culvert from Colorado River into restored channel to Ocean Bridge	Selenium (T)	2.2 µg/L (A&Ww chronic)
			Total residual chlorine	33 µg/L (A&Ww acute)
				20 µg/L (A&Ww chronic)
SR	Pinto Creek	From confluence of Ellis Ranch tributary at 33°19'26.7"/110°54'57.5" to the confluence of West Fork of Pinto Creek at 33°27'32.3"/ 111°00'19.7"	Copper (D)	34 µg/L (A&Ww acute for hardness values below 268 mg/L)
				34 µg/L (A&Ww chronic)

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Appendix C repealed effective April 24, 1996 (Supp. 96-2). New Appendix C made 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 August 2, 2016 (Supp. 16-4). Appendix C amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

ARTICLE 2. WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS

R18-11-201. 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 (CaCO3) 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.

Historical Note

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection A. effective April 17, 1984 (Supp. 84-2). Former Section R9-21-201 repealed, former Section R9-21-203 renumbered as Section R9-21-201 and amended effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-201 renumbered without change as Section R18-11-201 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-202. 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 of 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.

Historical Note

Former Section R9-21-202 repealed, former Section R9-21-102 renumbered as Section R9-21-202 and amended effective January 7, 1985 (Supp. 85-1). Amended subsections (B), (D), and (E) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-202 renumbered without change as Section R18-11-202 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-203. 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.

Historical Note

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection (B) by adding paragraphs (27) and (28) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-203 renumbered as Section R9-21-201, former Section R9-21-204 renumbered as Section R9-21-203 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-203 renumbered and amended as Section R9-21-204, new Section R9-21-203 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-203 renumbered without change as Section R18-11-203 (Supp. 87-3). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-204. Interim, Presumptive Designated Uses

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 con-

sumption. 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.

Historical Note

Former Section R9-21-204 renumbered and amended as Section R9-21-207, former Section R9-21-206 renumbered and amended as Section R9-21-204 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-204 renumbered as Section R9-21-203, former Section R9-21-205 renumbered as Section R9-21-204 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-204 renumbered and amended as Section R9-21-205, former Section R9-21-203 renumbered and amended as Section R9-21-204 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-204 renumbered without change as Section R18-11-204 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-205. 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.

Historical Note

Former Section R9-21-205 repealed, new Section R9-21-205 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-205 renumbered as Section R9-21-204, former Section R9-21-206 renumbered as Section R9-21-205 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-205 renumbered and amended as Section R9-21-206, former Section R9-21-204 renumbered and amended as Section R9-21-205 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-205 renumbered without change as Section R18-11-205 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-206. 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.

Historical Note

Former Section R9-21-206 renumbered and amended as Section R9-21-204, new Section R9-21-206 adopted effective January 29, 1980 (Supp. 80-1). Amended by adding subsection (B) effective October 14, 1981 (Supp. 81-5). Amended subsection (B) and Table 1 effective January 29, 1982 (Supp. 82-1). Amended subsection (B) and Table 1 effective August 13, 1982 (Supp. 82-4). Former Section R9-21-206 renumbered as Section R9-21-205, former Section R9-21-207 renumbered as Section R9-21-206 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-206 renumbered and amended as Section R9-21-207, former Section R9-21-205 renumbered and amended as R9-21-206 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-206 renumbered without change as Section R18-11-206 (Supp. 87-3). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-207. 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.

Historical Note

Former Section R9-21-207 repealed, former Section R9-21-204 renumbered and amended as Section R9-21-207 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-207 renumbered as Section R9-21-206, former Section R9-21-208 renumbered as Section R9-21-207 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-207 renumbered without change as Section R9-21-208, former Section R9-21-206 renumbered and amended as Section R9-21-207 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-207 renumbered without change as Section R18-11-207 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-208. 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.

Historical Note

Former Section R9-21-208 repealed, new Section R9-21-208 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-208 renumbered as Section R9-21-207, Appendices 1 through 9 amended as Appendix A (now shown following R9-21-213), former Section R9-21-209 renumbered as R9-21-208 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-208 renumbered and amended as Section R9-21-209, former Section R9-21-207 renumbered without change as Section R9-21-208 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-208 renumbered without change as Section R18-11-208 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-209. Variances

A. Upon request, the Director may establish, by rule, a discharger-specific or water segment-specific or water segments-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. 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:
   a. Naturally occurring pollutant concentrations prevent attainment of the use;
   b. 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;
   c. 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;
   d. 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;
   e. 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;
   f. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
7. For a waterbody segment-specific or segments-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
   a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant or pollutants or water quality parameter or parameters and water body or waterbody segment or segments specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
   b. If any variance pursuant to subsection (B)(7)(a) previously applied to the water body or waterbody segment or segments, documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant or pollutants or water quality parameter or parameters subject to the water quality variance and the water quality progress achieved.
8. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section: Identification of the permittee subject to the variance.

C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
4. The likelihood of adverse human health effects.

D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.

E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(6)(a)(vi). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
2. The interim effluent condition that reflects the greatest pollutant reduction achievable.

F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.

G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.

H. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E).

I. The Director shall periodically, but not more than every five 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.

Historical Note

Former Section R9-21-209 renumbered and amended as Section R9-21-210, new Section R9-21-209 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-209 renumbered as Section R9-21-208, Tables I and II amended as Appendix B (now shown following R9-21-213 and Appendix A), former Section R9-21-210 renumbered as Section R9-21-209 and amended effective

January 7, 1985 (Supp. 85-1). Former Section R9-21-209 renumbered and amended as Section R9-21-210, former Section R9-21-208 renumbered and amended as Section R9-21-209 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-209 renumbered without change as Section R18-11-209 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-210. 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 R18-11-215;
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 R18-11-215;
4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in R18-11-215. "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. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:

1. Identifies the pollutant;
2. Describes the reach's boundaries;
3. Describes the hydrologic regime of the waterbody;
4. 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;
5. 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;
6. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
7. Demonstrates that all designated uses are protected; and
8. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration.

Historical Note

Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective January 29, 1980 (Supp. 80-1). Amended subsection (A) effective April 17, 1984 (Supp. 84-2). Former Section R9-21-210 renumbered as Section R9-21-209, former Section R9-21-211 renumbered as Section R9-21-210 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-210 renumbered without change as Section R18-11-210 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-211. 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.

Historical Note

Former Section R9-21-210 renumbered and amended as Section R9-21-211 effective January 29, 1980 (Supp. 80-1). Amended subsections (D), (G) three (I), and added (J) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-211 renumbered as Section R9-21-210, former Section R9-21-212 renumbered as Section R9-21-211 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-211 renumbered and amended as Section R9-21-212, former Section R9-21-210 renumbered and amended as Section R9-21-211 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-211 renumbered without change as Section R18-11-211 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-212. 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.

Historical Note

Adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-212 renumbered as Section R9-21-211, former Section R9-21-213 renumbered as Section R9-21-212 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-212 repealed, former Section R9-21-211 renumbered and amended as Section R9-21-212 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-212 renumbered without change as Section R18-11-212 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-213. 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).

Historical Note

Adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Former Section R9-21-213 renumbered as Section R9-21-212, former Section R9-21-103 renumbered as Section R9-21-213 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-213 renumbered without change as Section R9-21-214, new Section R9-21-213 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-213 renumbered without change as Section R18-11-213 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-214. 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.

Historical Note

Former Section R9-21-213 renumbered without change as Section R9-21-214 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-214 renumbered without change as Section R18-11-214 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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):

E. coli	**FBC AZ**	**PBC AZ**
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for non-WOTUS protected surface waters pH are expressed in standard units:

pH	**DWS AZ**	**FBC AZ, PBC AZ, A&Ww AZ, A&Wc AZ**	**AgI AZ**	**AgL AZ**
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww AZ	**A&Wc AZ**
3.0° C	1.0° C

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.

A&Wc AZ	**A&Ww AZ**
25	80

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:

Designated Use	**Single sample minimum concentration in mg/L**
A&Ww AZ	6.0
A&Wc AZ	7.0

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. Tables 1 through 17 prescribe water quality criteria for individual pollutants by designated use.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 1. Water Quality Criteria by Designated Use (see footnote)

Parameter	CAS NUMBER	DWS AZ (µg/L)	FC AZ (µg/L)	FBC AZ (µg/L)	PBC AZ (µg/L)	A&Wc AZ Acute (µg/L)	A&Wc AZ Chronic (µg/L)	A&Ww AZ Acute (µg/L)	A&Ww AZ Chronic (µg/L)	AgI AZ (µg/L)	AgL AZ (µg/L)
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 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		
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 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	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	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	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-chloropro- pane	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	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	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 proprionic 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 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

Historical Note

Table 1 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 2. Acute Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife Coldwater AZ		Aquatic and Wildlife Warm Water AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	0.40	20	2.1
100	1.8	100	9.4
400	6.5	400	34
e(0.9789*LN(Hardness)-3.866)*(1.136672-LN(Hard-ness)*0.041838)		e(0.9789*LN(Hardness)-2.208)*(1.136672-LN(Hard-ness)*0.041838)	

Historical Note
Table 2 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 3. Chronic Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**
20	0.21
100	0.72
400	2.0
e(0.7977*LN(Hardness)-3.909)*(1.101672-LN(Hardness)*0.041838)	

Historical Note
Table 3 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 4. Water Quality Standards for Dissolved Chromium III

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	152	20	19.8
100	570	100	74.1
400	1,773	400	231
e(0.819*LN(Hardness)+3.7256)*(0.316)		e(0.819*LN(Hardness)+0.6848)*(0.86)	

Historical Note
Table 4 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 5. Water Quality Standards for Dissolved Copper

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	2.9	20	2.3
100	13	100	9.0
400	50	400	29
e(0.9422*LN(Hardness)-1.702)*(0.96)		e(0.8545*LN(Hardness)-1.702)*(0.96)	

Historical Note
Table 5 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 6. Water Quality Standards for Dissolved Lead

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	10.8	20	0.42
100	64.6	100	2.5
400	281	400	10.9
e(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))		e(1.273*LN(Hardness)-4.705) *(1.46203-(LN(Hardness))*(0.145712))	

Historical Note
Table 6 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 7. Water Quality Standards for Dissolved Nickel

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	120.0	20	13.3
100	468	100	52.0
400	1513	400	168
e(0.846*LN(Hardness)+2.255)*(0.998)		e(0.846*LN(Hardness)+0.0584)*(0.997)	

Historical Note
Table 7 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 8. Water Quality Standards for Dissolved Silver

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**

20	0.20
100	3.2
400	34.9
e(1.72*LN(Hardness)-6.59)*(0.85)	

Historical Note

Table 8 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 9. Water Quality Standards for Dissolved Zinc

Acute and Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**
20	30.0
100	117
400	379
e(0.8473*LN(Hardness)+0.884)*(0.978)	

Historical Note

Table 9 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 10. Water Quality Standards for Pentachlorophenol

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
pH	**µg/L**	**pH**	**µg/L**
3	0.16	3	0.1
6	3.3	6	2.1
9	67.7	9	42.7
e(1.005*(pH)-4.83)		e(1.005*(pH)-5.29)	

Historical Note

Table 10 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	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	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	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	11	11	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	9.6	9.6	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	3
7.8	8.1	8.1	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	6.8	6.8	6.6	6	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	5.6	5.6	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	4.6	4.6	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	3.8	3.8	3.7	3.5	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	3.1	3.1	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	2.6	2.6	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	2.1	2.1	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	1.8	1.8	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	0.59	0.54
8.7	1.5	1.5	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
8.8	1.2	1.2	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

8.9	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
9	0.88	0.88	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
$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times10^{0.036\times(20-T)}\right)\right)\right)$																	

Historical Note
Table 11 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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
8.8	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
8.9	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
9	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

$$\frac{0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN(51.93, 23.12 \times 10^{0.036\times(20-T)})}{}$$

Historical Note

Table 12 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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.

	Temperature (°C)																							
pH	**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

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Table 13 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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.

	Temperature (°C)																
pH	**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	9.3	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	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	6.5	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	5.4	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	4.5	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	3.7	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	2.8	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	2.5	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	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	1.7	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	1.4	1.3	1.2
8.8	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	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(62.15\times 10^{0.036\times(20-T)}\right)\right)\right)$$

Historical Note

Table 14 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	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
8.1	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
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	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
8.4	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
8.5	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
8.6	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
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204-pH}} + \frac{1.6181}{1 + 10^{pH-7.204}}\right) \times MIN\left(51.93, \left(62.15 \times 10^{0.036\times(20-T)}\right)\right)$$

Historical Note

Table 15 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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.

	Temperature (°C)																							
pH	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	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
6.6	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
6.7	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
6.8	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
6.9	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
7	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
7.1	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
7.2	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
7.3	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
7.4	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
7.5	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
7.6	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
7.7	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
7.8	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
7.9	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
8	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
8.1	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
8.2	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
8.3	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
8.4	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
8.5	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
8.6	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
8.7	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
8.8	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
8.9	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
9	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

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(7.547 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Table 16 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	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
6.6	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
6.7	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
6.8	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
6.9	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
7	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
7.1	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
7.2	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
7.3	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
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times MIN\left(6.920, \left(7.547 \times 10^{0.028 \times (20-T)}\right)\right)$$

Historical Note

Table 17 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-216. The Protected Surface Waters List

Tables A through C prescribe the protected surface waters list.

Historical Note

Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table A. Non-WOTUS Protected Surface Waters and Designated Uses

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Aquatic and Wildlife		Human Health				Agricultural	
			A&Wc AZ	A&Ww AZ	FBC AZ	PBC AZ	DWS AZ	FC AZ	AgI AZ	AgL AZ
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww AZ	FBC AZ			FC AZ		AgL AZ
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww AZ	FBC AZ			FC AZ		AgL AZ
LC	Boot Lake	34°58'54"/111°20'11"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Little Ortega Lake	34°22'47"/109°40'06"	A&Wc AZ		FBC AZ			FC AZ		
LC	Mormon Lake	34°56'38"/111°27'25"	A&Wc AZ		FBC AZ		DWS AZ	FC AZ	AgI AZ	AgL AZ
LC	Potato Lake	35°03'15"/111°24'13"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Pratt Lake	34°01'32"/109°04'18"	A&Wc AZ		FBC AZ			FC AZ		
LC	Sponseller Lake	34°14'09"/109°50'45"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Vail Lake	35°05'23"/111°30'46"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Water Canyon Reservoir	34°03'38"/109°26'20		A&Ww AZ	FBC AZ			FC AZ	AgI AZ	AgL AZ
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road at 33°31'24"/ 112°11'08"		A&Ww AZ		PBC AZ		FC AZ		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/ 111°56'19"		A&Ww AZ		PBC AZ		FC AZ		
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon Wash	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek	A&Wc AZ		FBC AZ			FC AZ		
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"		A&Ww AZ	FBC AZ		DWS AZ	FC AZ		
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa		A&Ww AZ	FBC AZ			FC AZ		
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Pinery Creek	Headwaters to State Highway 181	A&Wc AZ		FBC AZ		DWS AZ	FC AZ		AgL AZ
SP	Pinery Creek	Below State Highway 181 to terminus near Willcox Playa		A&Ww AZ	FBC AZ		DWS AZ	FC AZ		AgL AZ
SP	Post Creek	Headwaters to confluence with Grant Creek	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Riggs Flat Lake	32°42'28"/109°57'53"	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Rock Creek	Headwaters to confluence with Turkey Creek			FBC AZ			FC AZ		AgL AZ
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/ 109°54'41"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Snow Flat Lake	32°39'10"/109°51'54"	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Stronghold Canyon East	Headwaters to 31°55'9.28"/109°57'53.24"	A&Wc AZ			PBC AZ				
SP	Stronghold Canyon East	31°55'9.28"/109°57'53.24" to confluence with Carlink Canyon		A&Ww AZ		PBC AZ				
SP	Turkey Creek	Headwaters to confluence with Rock Creek	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa		A&Ww AZ	FBC AZ			FC AZ	AgI AZ	AgL AZ
UG	Ward Canyon	Headwaters to confluence with Turkey Creek	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
VR	Moonshine Creek	Headwaters to confluence with Post Creek	A&Wc AZ		FBC AZ			FC AZ		AgL AZ

Historical Note

Table A made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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 B 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 WOTUS Protected Surface Waters 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 Magdelena – 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 Water	Segment Description and Location (Latitude and Longitudes are in NAD 83)
BW	Big Sandy River	Headwaters to Alamo Lake
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River
CG	Colorado River	Lake Powell to Lake Mead
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Garden Creek	Headwaters to confluence with Pipe Creek
CG	Havasu Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River
CG	Kanab Creek	Headwaters to confluence with the Colorado River
CG	Lake Mead	36°06'18"/114°26'33"
CG	Lake Powell	36°59'53"/111°08'17"
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Paria River	Utah border to confluence with the Colorado River
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek
CG	Pipe Creek	Headwaters to confluence with the Colorado River
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash
CG	Tapeats Creek	Headwaters to confluence with the Colorado River
CG	Thunder River	Headwaters to confluence with Tapeats Creek
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"
CG	Virgin River	Headwaters to confluence with the Colorado River
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CL	A10 Backwater	33°31'45"/114°33'19"
CL	A7 Backwater	33°34'27"/114°32'04"
CL	Adobe Lake	33°02'36"/114°39'26"
CL	Cibola Lake	33°14'01"/114°40'31"
CL	Clear Lake	33°01'59"/114°31'19"
CL	Colorado River	Lake Mead to Topock Marsh
CL	Colorado River	Topock Marsh to Morelos Dam
CL	Gila River	Painted Rock Dam to confluence with the Colorado River
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"
CL	Imperial Reservoir	32°53'02"/114°27'54"
CL	Island Lake	33°01'44"/114°36'42"
CL	Laguna Reservoir	32°51'35"/114°28'29"
CL	Lake Havasu	34°35'18"/114°25'47"
CL	Lake Mohave	35°26'58"/114°38'30"
CL	Martinez Lake	32°58'49"/114°28'09"
CL	Mittry Lake	32°49'17"/114°27'54"
CL	Nortons Lake	33°02'30"/114°37'59"
CL	Pretty Water Lake	33°19'51"/114°42'19"
CL	Topock Marsh	34°43'27"/114°28'59"

LC	Auger Creek	Headwaters to confluence with Nutrioso Creek
LC	Chevelon Canyon	Headwaters to confluence with the Little Colorado River
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"
LC	Clear Creek	Headwaters to confluence with the Little Colorado River
LC	Clear Creek Reservoir	34°57'09"/110°39'14"
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek
LC	Colter Reservoir	33°56'39"/109°28'53"
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"
LC	East Clear Creek	Headwaters to confluence with Clear Creek
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"
LC	Fool's Hollow Lake	34°16'30"/110°03'43"
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River
LC	Lily Creek	Headwaters to confluence with Coyote Creek
LC	Little Colorado River	Headwaters to Lyman Reservoir
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River
LC	Lyman Reservoir	34°21'21"/109°21'35"
LC	Mamie Creek	Headwaters to confluence with Coyote Creek
LC	Morrison Creek	Headwaters to Mamie Creek @ 33°59'24.45"/109°03'51.94
LC	Nutrioso Creek	Headwaters to confluence with the Little Colorado River
LC	Porter Creek	Headwaters to confluence with Show Low Creek
LC	Riggs Creek	Headwaters to Nutrioso Creek
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"
LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek
LC	Rosey Creek	Headwaters to 34°02'28.72"/109°27'24.3"
LC	Scott Reservoir	34°10'31"/109°57'31"
LC	Show Low Creek	Headwaters to confluence with Silver Creek
LC	Show Low Lake	34°11'36"/110°00'12"
LC	Silver Creek	Headwaters to confluence with the Little Colorado River
LC	White Mountain Lake	34°21'57"/109°59'21"
LC	Willow Creek	Headwaters to confluence with Clear Creek
LC	Zuni River	Headwaters to confluence with the Little Colorado River
MG	Agua Fria River	From State Route 169 to Lake Pleasant
MG	Ash Creek	Headwaters to confluence with Tex Canyon
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/ 112°21'06"
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam
MG	Hassayampa Lake	34°25'45"/112°25'33"
MG	Hassayampa River	Below unnamed tributary to the Buckeye Irrigation Company Canal
MG	Hassayampa River	Headwaters to confluence with unnamed tributary at 34°26'09"/112°30'32"
MG	Lake Pleasant	33°53'46"/112°16'29"
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at 34°20'45.74"/112°4'17.26"
MG	Little Sycamore Creek	Headwaters to Sycamore Creek @ 34°21'39.13"/111°58'49.98"
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"
MG	Salt River	Verde River to 2 km below Granite Reef Dam
MG	Seven Springs Wash	Headwaters to Unnamed trib @ 33°57'58.66"/111°51'52.07"
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek
SC	California Gulch	Headwaters To U.S./Mexico border
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)
SC	Cox Gulch	Headwaters to Three R Canyon @ 31°28'28.03"/110°47'14.65"
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River
SC	Nogales Wash	Headwaters to confluence with Potrero Creek
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"
SC	Santa Cruz River	Tubac Bridge 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	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	Sycamore Canyon	Headwaters to the U.S./Mexico border
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek
SP	Bear Creek	Headwaters to U.S./Mexico border
SP	Black Draw	Headwaters to the U.S./Mexico border
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"
SP	Gold Gulch	Headwaters to U.S./Mexico border
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon

SP	San Pedro River	From Buehman canyon to confluence with the Gila River
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border
SR	Ackre Lake	33°37'01"/109°20'40"
SR	Apache Lake	33°37'23"/111°12'26"
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River
SR	Beaver Creek	Headwaters to confluence with Black River
SR	Black River	Headwaters to confluence with Salt River
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek
SR	Black River, West Fork	Headwaters to confluence with the Black River
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork
SR	Canyon Lake	33°32'44"/111°26'19"
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River
SR	Conklin Creek	Headwaters to confluence with the Black River
SR	Corduroy Creek	Headwaters to confluence with Fish Creek
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"
SR	Fish Creek	Headwaters to confluence with the Black River
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork
SR	Horton Creek	Headwaters to confluence with Tonto Creek
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"
SR	Pinal Creek	From unnamed tributary to confluence with Salt River
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"
SR	Roosevelt Lake	33°52'17"/111°00'17"
SR	Rye Creek	Headwaters to confluence with Tonto Creek
SR	Saguaro Lake	33°33'44"/111°30'55"
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake
SR	Willow Creek	Headwaters to confluence with Beaver Creek
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek
UG	Apache Creek	Headwaters to confluence with the Gila River
UG	Bitter Creek	Headwaters to confluence with the Gila River
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River
UG	Bob Thomas Creek	Headwaters to Stone Creek 33°51'93"/109°42'52"
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary
UG	Grant Creek	Headwaters to confluence with the Blue River
UG	Judd Lake	33°51'15"/109°09'35"
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek
UG	Luna Lake	33°49'50"/109°05'06"
UG	North Fork Cave Creek	Headwaters to Cave Creek @ 31°52'56.63"/109°12'19.75"
UG	Raspberry Creek	Headwaters to confluence with the Blue River
UG	San Francisco River	Headwaters to the New Mexico border
UG	San Francisco River	New Mexico border to confluence with the Gila River
UG	San Simon River	Headwaters to confluence with the Gila River
UG	Stone Creek	Headwaters to confluence with the San Francisco River
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek
VR	Bartlett Lake	33°49'52"/111°37'44"
VR	Beaver Creek	Headwaters to confluence with the Verde River
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River
VR	Dead Horse Lake	34°45'08"/112°00'42"
VR	East Verde River	Headwaters to confluence with Ellison Creek
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"
VR	Horseshoe Reservoir	34°00'25"/111°43'36"
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek
VR	Sullivan Lake	34°51'42"/112°27'51"
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"

VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam
VR	Verde River	Below Bartlett Lake Dam to Salt River
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek
VR	Willow Creek Reservoir	34°36'17"/112°26'19"

Historical Note

Table B made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

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 unless ADEQ makes a determination that they are non-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 Confirmation 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 Magdelena – 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 Water	Segment Description and Location (Latitude and Longitudes are in NAD 83)
BW	Alamo Lake	34°14'06"/113°35'00"
BW	Bill Williams River	Alamo Lake to confluence with Colorado River
BW	Blue Tank	34°40'14"/112°58'17"
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek
BW	Carter Tank	34°52'27"/112°57'31"
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek
BW	Copper Basin Wash	Headwaters to confluence with 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
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek
BW	Date Creek	Headwaters to confluence with Santa Maria River
BW	Knight Creek	Headwaters to confluence with Big Sandy River
BW	Peoples Canyon (OAW)	Headwaters to confluence with Santa Maria River
BW	Red Lake	35°12'18"/113°03'57"
BW	Santa Maria River	Headwaters to Alamo Lake
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"
CG	Agate Canyon	Headwaters to confluence with the Colorado River
CG	Big Springs Tank	36°36'08"/112°21'01"
CG	Boucher Creek	Headwaters to confluence with the Colorado River
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 Wash
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek
CG	Cataract Creek	Headwaters to Santa Fe Reservoir
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream
CG	Cataract Lake	35°15'04"/112°12'58"
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River
CG	City Reservoir	35°13'57"/112°11'25"
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"
CG	Detrital Wash	Headwaters to Lake Mead
CG	Dogtown Reservoir	35°12'40"/112°07'54"
CG	Dragon Creek	Headwaters to confluence with Milk Creek
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek
CG	Gonzalez Lake	35°15'26"/112°12'09"
CG	Grand Wash	Headwaters to Colorado River
CG	Grapevine Creek	Headwaters to confluence with the Colorado River
CG	Grapevine Wash	Headwaters to Colorado River
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River
CG	Hance Creek	Headwaters to confluence with the Colorado River
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"
CG	Horn Creek	Headwaters to confluence with the Colorado River

CG	Hualapai Wash	Headwaters to Lake Mead
CG	Jacob Lake	36°42'27"/112°13'50"
CG	Kaibab Lake	35°17'04"/112°09'32"
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River
CG	Monument Creek	Headwaters to confluence with the Colorado River
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Olo Canyon	Headwaters to confluence with the Colorado River
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '
CG	Roaring Springs	36°11'45"/112°02'06"
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River
CG	Ruby Canyon	Headwaters to confluence with the Colorado River
CG	Russell Tank	35°52'21"/111°52'45"
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Santa Fe Reservoir	35°14'31"/112°11'10"
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"
CG	Slate Creek	Headwaters to confluence with the Colorado River
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River
CG	Unnamed Wash to Cedar Canyon (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon
CG	Unnamed Wash to Spring Valley Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash
CG	Vishnu Creek	Headwaters to confluence with the Colorado River
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek
CL	Columbus Wash	Headwaters to confluence with the Gila River
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream
CL	Mohave Wash	Headwaters to Lower Colorado River
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"
CL	Quigley Pond	32°43'40"/113°57'44"
CL	Redondo Lake	32°44'32"/114°29'03"
CL	Sacramento Wash	Headwaters to Topock Marsh
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash
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	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"
LC	Ashurst Lake	35°01'06"/111°24'18"
LC	Atcheson Reservoir	33°59'59"/109°20'43"
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek
LC	Bear Canyon Lake	34°24'00"/111°00'06"
LC	Becker Lake	34°09'11"/109°18'23"
LC	Billy Creek	Headwaters to confluence with Show Low Creek
LC	Black Canyon	Headwaters to confluence with Chevelon Creek
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek
LC	Bunch Reservoir	34°02'20"/109°26'48"
LC	Carnero Lake	34°06'57"/109°31'42"
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek
LC	Chilson Tank	34°51'43"/111°22'54"
LC	Coconino Reservoir	35°00'05"/111°24'10"
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek
LC	Concho Creek	Headwaters to confluence with Carrizo Wash
LC	Concho Lake	34°26'37"/109°37'40"
LC	Cow Lake	34°53'14"/111°18'51"
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek

LC	Daves Tank	34°44'22"/111°17'15"
LC	Deep Lake	35°03'34"/111°25'00"
LC	Ducksnest Lake	34°59'14"/111°23'57"
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"
LC	Fish Creek	Headwaters to confluence with the Little Colorado River
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Geneva Reservoir	34°01'45"/109°31'46"
LC	Hall Creek	Headwaters to confluence with the Little Colorado River
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek
LC	Hay Lake	34°00'11"/109°25'57"
LC	Hog Wallow Lake	33°58'57"/109°25'39"
LC	Horse Lake	35°03'55"/111°27'50"
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek
LC	Hulsey Lake	33°55'58"/109°09'40"
LC	Humphrey Lake (EDW)	35°11'51"/111°35'19"
LC	Indian Lake	35°00'39"/111°22'41"
LC	Jacks Canyon	Headwaters to confluence with the Little Colorado River
LC	Jarvis Lake	33°58'59"/109°12'36"
LC	Kinnikinick Lake	34°53'53"/111°18'18"
LC	Knoll Lake	34°25'38"/111°05'13"
LC	Lake Mary, Lower	35°06'21"/111°34'38"
LC	Lake Mary, Upper	35°03'23"/111°28'34"
LC	Lake of the Woods	34°09'40"/109°58'47"
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir
LC	Lee Valley Reservoir	33°56'29"/109°30'04"
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork
LC	Leroux Wash, tributary to Little Colorado River	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.
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs
LC	Little George Reservoir	34°00'37"/109°19'15"
LC	Little Mormon Lake	34°17'00"/109°58'06"
LC	Long Lake, Lower	34°47'16"/111°12'40"
LC	Long Lake, Upper	35°00'08"/111°21'23"
LC	Long Tom Tank	34°20'35"/110°49'22"
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"
LC	Marshall Lake	35°07'18"/111°32'07"
LC	McKay Reservoir	34°01'27"/109°13'48"
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek
LC	Mexican Hay Lake	34°01'58"/109°21'25"
LC	Milk Creek	Headwaters to confluence with Hulsey Creek
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek
LC	Morton Lake	34°53'37"/111°17'41"
LC	Mud Lake	34°55'19"/111°21'29"
LC	Ned Lake (EDW)	34°17'17"/110°03'22"
LC	Norton Reservoir	34°03'57"/109°31'27"
LC	Paddy Creek	Headwaters to confluence with Nutrioso Creek
LC	Pierce Seep	34°23'39"/110°31'17"
LC	Pine Tank	34°46'49"/111°17'21"
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"
LC	Puerco River	Headwaters to confluence with the Little Colorado River
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream
LC	Rainbow Lake	34°09'00"/109°59'09"
LC	Reagan Reservoir	34°02'09"/109°08'41"
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"
LC	Rogers Reservoir	33°56'30"/109°16'20"
LC	Russel Reservoir	33°59'29"/109°20'01"
LC	San Salvador Reservoir	33°58'51"/109°19'55"
LC	Slade Reservoir	33°59'41"/109°20'26"
LC	Soldiers Annex Lake	34°47'15"/111°13'51"
LC	Soldiers Lake	34°47'47"/111°14'04"
LC	Spaulding Tank	34°30'17"/111°02'06"
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"
LC	Tremaine Lake	34°46'02"/111°13'51"
LC	Tunnel Reservoir	34°01'53"/109°26'34"
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek
LC	Unnamed Wash to Pierce Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep
LC	Unnamed wash, tributary to Rio de Flag River (Bow and Arrow Wash)	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.
LC	Walnut Creek	Headwaters to confluence with Billy Creek
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River
LC	Whale Lake (EDW)	35°11'13"/111°35'21"
LC	Whipple Lake	34°16'49"/109°58'29"
LC	White Mountain Reservoir	34°00'12"/109°30'39"
LC	Willow Creek	Headwaters to confluence with Clear Creek
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek

LC	Willow Springs Lake	34°18'13"/110°52'16"
LC	Woodland Reservoir	34°07'35"/109°57'01"
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek
LC	Woods Canyon Lake	34°20'09"/110°56'45"
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"
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	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash
MG	Antelope Creek	Headwaters to confluence with Martinez Creek
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"
MG	Arnett Creek	Headwaters to Queen Creek @ 33°16'43.24"/111°10'12.49"
MG	Ash Creek	Headwaters to confluence with Tex Canyon
MG	Beehive Tank	32°52'37"/111°02'20"
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River
MG	Cash Gulch	Headwaters to Jersey Gulch @ 34°25'31.39"/112°25'30.96"
MG	Cave Creek	Headwaters to the Cave Creek Dam
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"
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"
MG	Corgett Wash	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.
MG	Devils Canyon	Headwaters to confluence with Mineral Creek
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"
MG	Eugene Gulch	Headwaters to Big Bug Creek @ 34°27'11.51"/112°18'30.95"
MG	French Gulch	Headwaters to confluence with Hassayampa River
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	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road
MG	Groom Creek	Headwaters to confluence with the Hassayampa River
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51"52"/112°39'56".
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River
MG	Hassayampa River	From City of Buckeye-Palo Verde Road WWTP outfall at 33° 23' 54.3", -112° 40' 33.7" to Buckeye Canal
MG	Horsethief Lake	34°09'42"/112°17'57"
MG	Indian Bend Wash	Headwaters to confluence with the Salt River
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"
MG	Jersey Gulch	Headwaters to Hassayampa River @ 34°25'40.16"/112°25'45.64"
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"
MG	Lion Canyon	Headwaters to confluence with Weaver Creek
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River
MG	Lynx Lake	34°31'07"/112°23'07"
MG	Martinez Canyon	Headwaters to confluence with Box Canyon
MG	Martinez Creek	Headwaters to confluence with the Hassayampa River
MG	McKellips Park Lake	Miller Road & McKellips Road, 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"
MG	Mineral Creek	End of diversion channel to confluence with Gila River
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River
MG	Money Metals Trib	Headwaters to Unnamed Trib (UB1)
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"
MG	New River	Below Interstate 17 to confluence with Agua Fria River
MG	Painted Rock Reservoir	33°04'23"/113°00'38"
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"
MG	Perry Mesa Tank	34°11'03"/112°02'01"
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"
MG	Poland Creek	Headwaters to confluence with Lorena Gulch
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"
MG	Queen Creek	Below Potts Canyon to ' Whitlow Dam
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon
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	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"
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake
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 Creek	Headwaters to confluence with Tank Canyon
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River
MG	The Lake Tank	32°54'14"/111°04'15"
MG	Tule Creek	Headwaters to confluence with the Agua Fria River
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek
MG	Unnamed Trib (UQ2) to Queen Creek	Headwaters to Queen Creek @ 33°18'26.15"/111°04'19.3"
MG	Unnamed Trib (UQ3) to Queen Creek	Headwaters to Queen Creek @ 33°18'33.75"/111°04'02.61"
MG	Unnamed Trib to Big Bug Creek (UB1)	Headwaters to Big Bug Creek @ 34°25'38.86"/112°22'29.32"
MG	Unnamed Trib to Eugene Gulch	Headwaters to Eugene Gulch @ 34°27'34.6"/112°20'24.53"
MG	Unnamed Trib to Lynx Creek	Headwaters to Superior Mining Div. Outfall @ Lynx Creek @ 34°27'10.57"/112°23'14.22"
MG	Unnamed tributary to Deadman's Wash	From EPCOR Water Anthem Water Campus WWTP outfall at 33° 50' 47.9", -112° 08' 25.6" to Deadman's Wash
MG	Unnamed tributary to Gila River (EDW)	Gila Bend WWTP outfall to confluence with the Gila River
MG	Unnamed tributary to Gila River (EDW)	North Florence WWTP outfall at 33°03'50"/ 111°23'13" to confluence with Gila River
MG	Unnamed tributary to the Agua Fria River	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)
MG	Unnamed tributary to Winters Wash	From Balterra WWTP outfall at 33? 29' 45", -112? 55' 10" to Winters Wash
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)	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	Unnamed wash, tributary to Black Canyon Creek	From Black Canyon Ranch RV Resort WWTP outfall to Agua Fria River.
MG	Unnamed wash, tributary to Queen Creek	Queen Creek, AZ15050100-013B is closest WBID to outfall coordinates
MG	Unnamed wash, tributary to Waterman Wash	The Rainbow Valley outfall discharges to an unnamed wash to Waterman wash to the Gila River.
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
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Creek
MG	White Canyon	Headwaters to confluence with Walnut Canyon Creek
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"
SC	Alambre Wash	Headwaters to confluence with Brawley Wash
SC	Alamo Wash	Headwaters to confluence with Rillito Creek
SC	Altar Wash	Headwaters to confluence with Brawley Wash
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"
SC	Arivaca Creek	Headwaters to confluence with Altar Wash
SC	Arivaca Lake	31°31'52"/111°15'06"
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash
SC	Bear Grass Tank	31°33'01"/111°11'03"
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"
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash
SC	Cañada del Oro	Headwaters to State Route 77
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/ 110°38'49"
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"
SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek
SC	Flux Canyon	Headwaters to confluence with Alum Gulch
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek
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"
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border
SC	Huachuca Tank	31°21'11"/110°30'18"
SC	Humboldt Canyon	Headwaters to Alum Gulch @ 31°28'25.84"/110°44'01.57"
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/ 111°00'27"
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek
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"
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon
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"
SC	Parker Canyon Lake	31°25'35"/110°27'15"
SC	Patagonia Lake	31°29'56"/110°50'49"

SC	Peña Blanca Lake	31°24'15"/111°05'12"
SC	Potrero Creek	Headwaters to Interstate 19
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River
SC	Puertocito Wash	Headwaters to confluence with Altar Wash
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek
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"
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon
SC	Rose Canyon Lake	32°23'13"/110°42'38"
SC	Ruby Lakes	31°26'29"/111°14'22"
SC	Sabino Creek	Headwaters to 32°23'20"/110°47'06"
SC	Sabino Creek	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River
SC	Salero Ranch Tank	31°35'43"/110°53'25"
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River
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 (EDW)	City of Casa Grande WRF outfall to 1 km downstream
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"
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"
SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River
SC	Split Tank	31°28'11"/111°05'12"
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir
SC	Sycamore Reservoir	32°20'57"/110°47'38"
SC	Tanque Verde Creek	Headwaters to Houghton Road
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/110°46'04"
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River
SC	Unnamed Trib (Endless Mine Tributary) to Harshaw Creek	Headwaters to Harshaw Creek @ 31°26'12.3"/110°43'27.26"
SC	Unnamed Trib (UA2) to Alum Gulch	Headwaters to Alum Gulch @ 31°28'49.67"/110°44'12.86"
SC	Unnamed Trib to Cox Gulch	Headwaters to Cox Gulch @ 31°27'53.86"/110°46'51.29"
SC	Unnamed Trib to Three R Canyon	Headwaters to Three R Canyon @ 31°28'25.82"/110°46'04.11"
SC	Unnamed Wash to Canada Del Oro (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream
SC	Unnamed Wash to Canada del Oro (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro
SC	Unnamed Wash to Santa Cruz Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash
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"
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"
SP	Babocomari River	Headwaters to confluence with the San Pedro River
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"
SP	Bass Canyon Tank	32°24'00"/110°13'00"
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek
SP	Brewery Gulch	Headwaters to Mule Gulch @ 31°26'27.88"/109°54'48.1"
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River
SP	Copper Creek	Headwaters to confluence with Prospect Canyon
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River
SP	Curry Draw	Headwaters to San Pedro River
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon
SP	Dry Canyon	Headwaters to confluence with Whitewater draw
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash
SP	Fourmile Canyon Creek	Headwaters to confluence with Aravaipa Creek
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"
SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River

SP	Glance Creek	Headwaters to confluence with Whitewater Draw
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River
SP	Greenbush Draw	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.
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek
SP	Hot Springs Canyon	Headwaters to confluence with the San Pedro River
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"
SP	Leslie Creek	Headwaters to confluence with Whitewater Draw
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River
SP	Montezuma Creek	Headwaters to Mexico Border @ 31°20'01.87"/110°13'40.97"
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"
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
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River
SP	Parsons Canyon	Headwaters to confluence with Aravaipa Creek
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw
SP	Rucker Canyon Lake	31°46'46"/109°18'30"
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon
SP	Swamp Springs Canyon Creek	Headwaters to confluence with Redfield Canyon
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek
SP	Unnamed Wash Mt. Lemmon (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37/111°26'40"
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek
SR	Basin Lake	33°55'00"/109°26'09"
SR	Bear Creek	Headwaters to confluence with the Black River
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with the Bear Wallow Creek
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with the Bear Wallow Creek
SR	Big Lake	33°52'36"/109°25'33"
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek
SR	Campaign Creek	Headwaters to Roosevelt Lake
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary
SR	Centerfire Creek	Headwaters to confluence with the Black River
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"
SR	Christopher Creek	Headwaters to confluence with Tonto Creek
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork
SR	Deer Creek (D2E)	Headwaters to confluence with the Black River, East Fork
SR	Del Shay Creek	Headwaters to confluence with Gun Creek
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" /110°52'35"
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek
SR	Fish Creek	Headwaters to confluence with the Salt River
SR	Five Point Mountain Tributary	Headwaters to Pinto Creek @ 33°22'25.93"/110°58'14"
SR	Gibson Mine Tributary	Headwaters to Pinto Creek @ 33°20'48.99"/110°56'42.31"
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek
SR	Greenback Creek	Headwaters to confluence with Tonto Creek
SR	Home Creek	Headwaters to confluence with the Black River, West Fork
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Houston Creek	Headwaters to confluence with Tonto Creek
SR	Hunter Creek	Headwaters to confluence with Christopher Creek
SR	LaBarge Creek	Headwaters to Canyon Lake

SR	Lake Sierra Blanca	33°52'25"/109°16'05"
SR	Miami Wash	Headwaters to confluence with Pinal Creek
SR	Mule Creek	Headwaters to confluence with Canyon Creek
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"
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 See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°25'29"/110°48'20"
SR	Pine Creek	Headwaters to confluence with the Salt River
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake
SR	Pole Corral Lake	33°30'38"/110°00'15"
SR	Pueblo Canyon Creek	Headwaters to 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
SR	Reevis Creek	Headwaters to confluence with Pine Creek
SR	Reservation Creek	Headwaters to confluence with the Black River
SR	Reynolds Creek	Headwaters to confluence with Workman Creek
SR	Russell Gulch	From Headwaters to confluence with Miami Wash
SR	Salome Creek	Headwaters to confluence with the Salt River
SR	Salt House Lake	33°57'04"/109°20'11"
SR	Slate Creek	Headwaters to confluence with Tonto Creek
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River
SR	Spring Creek	Headwaters to confluence with Tonto Creek
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork
SR	Thomas Creek	Headwaters to confluence with Beaver Creek
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River
SR	Turkey Creek	Headwaters to confluence with Rock Creek
SR	Unnamed trib to Black River North Fork East Fork	Headwaters to Black River NF of EF
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River
UG	Bennett Wash	Headwaters to the Gila River
UG	Buckelew Creek	Headwaters to confluence with Castle Creek
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine
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
UG	Cima Creek	Headwaters to confluence with Cave Creek
UG	Cluff Reservoir #1	32°48'55"/109°50'46"
UG	Cluff Reservoir #3	32°48'21"/109°51'46"
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek
UG	Dankworth Lake	32°43'13"/109°42'17"
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River
UG	East Whitetail	Headwaters to terminus near San Simon River
UG	Emigrant Canyon	Headwaters to terminus near San Simon River
UG	Evans Pond #1	32°49'19"/109°51'12"
UG	Evans Pond #2	32°49'14"/109°51'09"
UG	Fishhook Creek	Headwaters to confluence with the Blue River
UG	Foote Creek	Headwaters to confluence with the Blue River
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"
UG	Georges Tank	33°51'24"/109°08'30"
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek
UG	Lanphier Canyon	Headwaters to confluence with the Blue River
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek
UG	Little Creek	Headwaters to confluence with the San Francisco River
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash
UG	Markham Creek	Headwaters to confluence with the Gila River
UG	Pigeon Creek	Headwaters to confluence with the Blue River
UG	Roper Lake	32°45'23"/109°42'14"
UG	Sheep Tank	32°46'14"/109°48'09"
UG	Smith Pond	32°49'15"/109°50'36"
UG	Squaw Creek	Headwaters to confluence with Thomas Creek
UG	Stone Creek	Headwaters to confluence with the San Francisco River
UG	Strayhorse Creek	Headwaters to confluence with the Blue River
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek
UG	Tinny Pond	33°47'49"/109°04'27"
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"
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
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Aspen Creek	Headwaters to confluence with Granite Creek

VR	Banning Creek	Headwaters to Granite Creek @ 34°31'01.02"/112°28'37.63"
VR	Bar Cross Tank	35°00'41"/112°05'39"
VR	Barrata Tank	35°02'43"/112°24'21"
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River
VR	Bonita Creek	Headwaters to confluence with Ellison Creek
VR	Bray Creek	Headwaters to confluence with Webber Creek
VR	Butte Creek	Headwaters to Miller Creek @ 34°32'49.03"/112°28'29.3"
VR	Camp Creek	Headwaters to confluence with Verde River
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Chase Creek	Headwaters to confluence with the East Verde River
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek
VR	Coffee Creek	Headwaters to confluence with Spring Creek
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Deadman Creek	Headwaters to Horseshoe Reservoir
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 Verde River
VR	Del Rio Dam Lake	34°48'55"/112°28'03"
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'42"/ 111°52'26" to 34°50'02"/ 111°52'17"
VR	Dude Creek	Headwaters to confluence with the East Verde River
VR	Ellison Creek	Headwaters to confluence with the East Verde River
VR	Foxboro Lake	34°53'42"/111°39'55"
VR	Fry Lake	35°03'45"/111°48'04"
VR	Gap Creek	Headwaters to confluence with Government Spring
VR	Gap Creek	Below Government Spring to confluence with the Verde River
VR	Garrett Tank	35°18'57"/112°42'20"
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"
VR	Government Canyon	Headwaters to Granite Creek @ 34°33'29.49"/112°26'53.18"
VR	Granite Basin Lake	34°37'01"/112°32'58"
VR	Granite Creek	Headwaters to Watson Lake
VR	Granite Creek	Below Watson Lake to confluence with the Verde River
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"
VR	Heifer Tank	35°20'27"/112°32'59"
VR	Hells Canyon Tank	35°04'59"/112°24'07"
VR	Homestead Tank	35°21'24"/112°41'36"
VR	Horse Park Tank	34°58'15"/111°36'32"
VR	Houston Creek	Headwaters to confluence with the Verde River
VR	Huffer Tank	34°27'46"/111°23'11"
VR	J.D. Dam Lake	35°04'02"/112°01'48"
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
VR	Mail Creek	Headwaters to East Verde River @ 34°25'03.88"/111°15'49.6"
VR	Manzanita Creek	Headwaters to Granite Creek @ 34°31'31.19"/112°28'44.34"
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"
VR	McLellan Reservoir	35°13'09"/112°17'06"
VR	Meath Dam Tank	35°07'52"/112°27'35"
VR	Miller Creek	Headwaters to Granite Creek @ 34°32'48.55"/112°28'12.96"
VR	Mullican Place Tank	34°44'16"/111°36'10"
VR	Munds Creek (EDW), Tributary to Oak Creek	From Pinewood Sanitary District Kay S. Blackman WWTP outfall at 34? 56' 09", -111? 38' 35" to Oak Creek.
VR	North Fork Miller	Headwaters to Miller Creek
VR	North Granite Creek	Headwaters to Granite Creek @ 34°33'04.33"/112°27'50.45"
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek
VR	Odell Lake	34°56'5"/111°37'53"
VR	Peck's Lake	34°46'51"/112°02'01"
VR	Perkins Tank	35°06'42"/112°04'12"
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River
VR	Red Creek	Headwaters to confluence with the Verde River
VR	Reservoir #1	35°13'5"/111°50'09"
VR	Reservoir #2	35°13'17"/111°50'39"
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek
VR	Scholze Lake	35°11'53"/112°00'37"
VR	Slaugterhouse Gulch	Headwaters to Yavapai Res. Boundary
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"
VR	Steel Dam Lake	35°13'36"/112°24'54"
VR	Stehr Lake	34°22'01"/111°40'02"
VR	Stoneman Lake	34°46'47"/111°31'14"
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River
VR	Sycamore Creek	Headwaters to confluence with Verde River at 34°04'42"/111°42'14"
VR	Tangle Creek	Headwaters to confluence with Verde River
VR	Trinity Tank	35°27'44"/112°48'01"
VR	Unnamed Trib to Granite Creek (UGC)	Headwaters to Yavapai Prescott Reservation Boundary
VR	Unnamed Trib to UGC (UUG)	Headwaters to Unnamed Trib to Granite Creek (UGC)
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at 35°13'53.54"/ 111°48'40.32"'to Volunteer Wash

VR	Walnut Creek	Headwaters to confluence with Big Chino Wash
VR	Watson Lake	34°34'58"/112°25'26"
VR	Webber Creek	Headwaters to confluence with the East Verde River
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/ 111°34'34"
VR	Whitehorse Lake	35°06'59"/112°00'48"
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream
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"
VR	Willow Creek	Above Willow Creek Reservoir
VR	Willow Valley Lake	34°41'08"/111°20'02"

Historical Note

Table C made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-217. 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 1/4 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: 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 precast 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. The owner or operator of any regulated activities shall, five 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 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: The BMPS and notification requirements in this Section shall not apply to:

1. Activities that are already regulated under A.R.S. Title 49.
2. Discharges to a non-WOTUS protected surface water incidental to a recharge project.
3. 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.
4. Maintenance but not construction of drainage ditches.
5. Construction and maintenance of irrigation ditches.
6. Maintenance of structures as dams, dikes, and levees.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Appendix A. Repealed

Historical Note

Former Section R9-21-208, Appendices 1 through 9 renumbered and amended as new Appendix A adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

Appendix B. Repealed

Historical Note

Former R9-21-209, Table 1 and Table 2 renumbered and amended as Appendix B adopted effective January 7, 1985 (Supp.85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

"Direct reuse" has the meaning prescribed in R18-9-701(1).

"Disinfection" means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

"Filtration" means a treatment process that removes particulate matter from wastewater by passage through porous media.

"Gray water" means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

"Industrial wastewater" means wastewater generated from an industrial process.

"Landscape impoundment" means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

"NTU" means nepholometric turbidity unit.

"On-site wastewater treatment facility" has the meaning prescribed in A.R.S. § 49-201(24).

"Open access" means that access to reclaimed water by the general public is uncontrolled.

"Reclaimed water" has the meaning prescribed in A.R.S. § 49-201(31).

"Recreational impoundment" means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

"Restricted access" means that access to reclaimed water by the general public is controlled.

"Secondary treatment" means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

"Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Historical Note

Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-302. Applicability

This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

Historical Note

Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-303. Class A+ Reclaimed Water

A. Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.

D. Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

Historical Note

Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-304. Class A Reclaimed Water

A. Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsec-

tion (B)(2) before discharge to a reclaimed water distribution system.

D. A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

Historical Note
Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-305. Class B+ Reclaimed Water

A. Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.

B. An owner of a facility shall ensure that:
1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-306. Class B Reclaimed Water

A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.

B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.

C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-307. Class C Reclaimed Water

A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.

B. The owner of a facility shall ensure that:
1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.

C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-308. Industrial Reuse

A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:
1. Direct reuse of industrial wastewater containing sewage.
2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.

B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse

A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.

B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.

C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
1. The risk to public health;
2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;
4. The level of treatment necessary to prevent nuisance conditions;

5. Specific water quality requirements for the intended type of direct reuse;
6. The means of application of the reclaimed water;
7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
8. The potential for improper or unintended use of the reclaimed water;
9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-401. Definitions
In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
4. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
5. "Mg/l" means milligrams per liter.
6. "Millirem" means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. "Non-drinking water protected use" means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. "pCi" means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. "Total trihalomethanes" means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Amended effective August 14, 1992 (Supp. 92-3).

R18-11-402. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Repealed effective August 14, 1992 (Supp. 92-3).

R18-11-403. Analytical Methods
Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-610(C).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Amended effective August 14, 1992 (Supp. 92-3). Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-404. Laboratories
A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has

been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-405. Narrative Aquifer Water Quality Standards

A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.

B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.

C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.

B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

C. The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) pthalate	0.006
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Styrene	0.1
2,3,7,8-TCDD (Dioxin)	0.00000003
Tetrachloroethylene	0.005
Toluene	1
Trihalomethanes (Total)	0.10
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl Chloride	0.002
Xylenes (Total)	10

D. The following are the aquifer water quality standards for pesticides and polychlorinated biphenyls (PCBs):

Pollutant	(mg/L)
Alachlor	0.002
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
1,2-Dibromo-3-Chloropropane (DBCP)	0.0002
2,4,-Dichlorophenoxyacetic Acid(2,4-D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl	0.2
Picloram	0.5
Polychlorinated Biphenols (PCBs)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05

E. The following are the aquifer water quality standards for radionuclides:

1. The maximum concentration for gross alpha particle activity, including Radium-226 but excluding radon and uranium, shall not exceed 15 pCi/l.
2. The maximum concentration for combined Radium-226 and Radium-228 shall not exceed 5 pCi/l.
3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
4. Except for the radionuclides listed in this subsection, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a 2-liter-per-day drinking water intake using the 168-hour data listed in “Maximum Permissible Body Burdens and Maximum Permissible Con-

centration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, National Bureau of Commerce, as amended August 1963 (and no future editions), incorporated herein by reference and on file with the Office of the Secretary of State and with the Department. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year. The following average annual concentrations are assumed to produce a total body or organ dose of 4 millirem/year:

Radionuclide	Critical Organ	pCi/l
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

F. The aquifer water quality standard for microbiological contaminants is based upon the presence or absence of total coliforms in a 100-milliliter sample. If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. The following are the aquifer water quality standards for turbidity:

1. One nephelometric turbidity unit as determined by a monthly average except that five or fewer nephelometric turbidity units may be allowed if it can be determined that the higher turbidity does not interfere with disinfection, prevent maintenance of effective disinfectant agents in water supply distribution systems, or interfere with microbiological determinations.
2. Five nephelometric turbidity units based on an average of two consecutive days.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended effective May 26, 1994 (Supp. 94-2).

R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers

A. All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a nondrinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.

B. Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C).

C. The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223(E) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-408. Petition for Adoption of a Numeric Aquifer Water Quality Standard

A. Any person may petition the Director to adopt, by rule, a numeric aquifer water quality standard for a pollutant for which no numeric aquifer water quality standard exists.

B. Petitions for adoption of a numeric aquifer water quality standard shall be filed with the Department and shall comply with the requirements applicable to petitions for rule adoption as provided by A.R.S. § 41-1033 and A.A.C. R18-1-302, except as otherwise provided by A.R.S. § 49-223 or this Section.

C. In addition to the requirements of A.A.C. R18-1-302, a petition for rule adoption to establish a numeric aquifer water quality standard shall include specific reference to:

1. Technical information that the pollutant is a toxic pollutant.
2. Technical information upon which the Director reasonably may base the establishment of a numeric aquifer water quality standard.
3. Evidence that the pollutant that is the subject of the petition is or may in the future be present in an aquifer or part of an aquifer that is classified for drinking water protected use. Evidence may include, but is not limited to, any of the following:
   a. A laboratory analysis of a water sample by a laboratory licensed by the Arizona Department of Health Services which indicates the presence of the pollutant in the aquifer.
   b. A hydrogeological study which demonstrates that the pollutant that is the subject of the petition may be present in an aquifer in the future. The hydrogeological study shall include the following:
      i. A description of the use that results in a discharge of the pollutant that is the subject of the petition.
      ii. A description of the mobility of the pollutant in the vadose zone and in the aquifer.
      iii. A description of the persistence of the pollutant in the vadose zone and in the aquifer.

D. Within 180 calendar days of the receipt of a complete petition for rule adoption to establish a numeric aquifer water quality standard, the Director shall make a written determination of whether the petition should be granted or denied. The Director shall give written notice by regular mail of the determination to the petitioner.

E. If the petition for rule adoption is granted, the Director shall initiate rulemaking proceedings to adopt a numeric aquifer water quality standard. The Director shall, within one year of the date that the petition for adoption of a numeric aquifer water quality standard is granted, either adopt a rule establishing a numeric aquifer water quality standard or publish a notice of termination of rulemaking in the Arizona Administrative Register.

F. If the petition for rule adoption is denied, the Director shall issue a denial letter to the petitioner which explains the reasons for the denial. The denial of a petition for rule adoption to establish a numeric aquifer water quality standard is not subject to judicial review.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).

Appendix 1. Repealed

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 2. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 3. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 4. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 5. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 6. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 7. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

R18-11-501. Definitions
In addition to the definitions contained in A.R.S. § 49-201, the words and phrases of this Article shall have the following meaning:

1. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
2. "Hardrock areas containing little or no water" means areas of igneous or metamorphic rock which do not yield usable quantities of water.
3. "Nondrinking water protected use" means the protection and maintenance of aquifer water quality for a use other than human consumption.
4. "Usable quantities" means five gallons of water per day.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-502. Aquifer Boundaries

A. Except as provided in subsection (B), aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference, on file and available for public inspection at the Department of Environmental Quality. No later amendments or editions are incorporated by reference.

B. Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydrologic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference, on file and available for public inspection at the Department of Environmental Quality. No later amendments or editions are incorporated by reference.

C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:

1. The Department of Water Resources modifies the boundaries of its basins or subbasins.
2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.

D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-503. Petition for reclassification

A. Any person may petition the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C).

B. A written petition for reclassification pursuant to A.R.S. § 49-224(C) or A.R.S. § 49-224(D) shall be filed with the Department and shall include the following categories of information:

1. The proposed protected use for which the reclassification is being requested.
2. The pollutant and affected aquifer water quality standards for which the reclassification is being requested.
3. A hydrogeologic report which demonstrates that the aquifer proposed for reclassification is or will be hydrologically isolated, to the extent described in A.R.S. § 49-224(C)(1). This report and demonstration of hydrologic isolation for the area containing such aquifer, and immediate adjacent geologic units, shall include at least the following:
   a. Hydrogeologic area maps and cross sections.
   b. An analysis of subsurface geology, including geologic and hydrologic separation.
   c. Water level elevation or piezometric level contour maps.
   d. Analysis of hydrologic characteristics of the aquifer and the immediate adjacent geologic units.
   e. Description of existing water quality and analysis of water chemistry.
   f. Projected annual quantity of water to be withdrawn.
   g. Identification of pumping centers, cones of depression and areas of recharge.
   h. A water balance.
   i. Existing flow direction and evaluation of the effects of seasonal and future pumping on flow.
   j. An evaluation as to whether the reclassification will contribute to or cause a violation of aquifer water quality standards in other aquifers, or in parts of the aquifer not being proposed for reclassification.
4. Documentation demonstrating that water from the aquifer or part of the aquifer for which reclassification is pro-

posed is not being used as drinking water. This documentation shall include at least the following:

a. A list of all wells or springs including their location, ownership and use within the aquifer or part of the aquifer being proposed for reclassification.
b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within the aquifer or part of the aquifer being proposed for reclassification.
c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.

5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-504. Agency Action on Petition

A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.

B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C), the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-505. Public participation

A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.

B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

Historical Note
Adopted effective June 29, 1989 (Supp. 89-2).

R18-11-506. Rescission of Reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C).

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
   a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
   b. Samples or analyses representative of water quality conditions at the time the data were collected;
   c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
   d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the

absence of pollutant loadings as a result of human activity.

11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
    a. A TMDL is prepared and implemented for the surface water;
    b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or
    c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.
12. "NPDES" means National Pollutant Discharge Elimination System.
13. "Planning List" means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. "Pollution" means "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. 1362(19).
16. "QAP" means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. "Sampling event" means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. "SAP" means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.
19. "Spatially independent sample" means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
    a. More than 200 meters apart from other samples, or
    b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. "Temporally independent sample" means a sample that is collected at the same station or location more than seven days apart from other samples.
21. "Threatened" means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. "TMDL" means total maximum daily load.
23. "TMDL decision" means a decision by the Department to:
    a. Prioritize an impaired water for TMDL development,
    b. Develop a TMDL for an impaired water, or
    c. Develop a TMDL implementation plan.
24. *"Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.* A.R.S. § 49-231(4).
25. "Water quality standard" means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.
26. "WQARF" means the water quality assurance revolving fund established under A.R.S. § 49-282.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-602. Credible Data

A. Data are credible and relevant to an impaired water identification or a TMDL decision when:

1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
    c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
        i. Samples are spatially and temporally representative of the surface water,
        ii. Samples are representative of water quality conditions at the time of sampling, and
        iii. The monitoring is reproducible;
    d. The following field sampling information to assure that samples meet data quality objectives:
        i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis

proposed for completion in the field or outside of a laboratory;

ii. Field and laboratory methods approved under subsection (A)(5);

iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;

iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

v. Procedures for testing, inspecting, and maintaining field equipment;

vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;

vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;

viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;

e. Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:

i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;

ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name of a laboratory contact person to assist the Department with quality assurance questions;

iii. Quality controls that describe the number and type of laboratory quality control samples for the project, including, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

iv. Procedures for testing, inspecting, and maintaining laboratory equipment and facilities;

v. A schedule for calibrating laboratory instruments, a description of calibration methods, and a description of how calibration records are maintained; and

vi. Sample equipment decontamination procedures that outline specific methods for sample collection and preparation of equipment, identify the frequency of decontamination, and describe the procedures used to verify decontamination;

f. Data review, management, and use that includes the following:

i. A description of the data handling process from field to laboratory, from laboratory to data review and validation, and from validation to data storage and use. Include the role and responsibility of each person for each step of the process, type of database or other storage used, and how laboratory and field data qualifiers are related to the laboratory result;

ii. Reports that describe the intended frequency, content, and distribution of final analysis reports and project status reports;

iii. Data review, validation, and verification that describes the procedure used to validate and verify data, the procedures used if errors are detected, and how data are accepted, rejected, or qualified; and

iv. Reconciliation with data quality objectives that describes the process used to determine whether the data collected meets the project objectives, which may include discarding data, setting limits on data use, or revising data quality objectives.

2. Sampling and analysis plan.

a. A monitoring entity shall develop a SAP that contains, at a minimum, the following elements:

i. The experimental design of the project, the project goals and objectives, and evaluation criteria for data results;

ii. The background or historical perspective of the project;

iii. Identification of target conditions, including a discussion of whether any weather, seasonal variations, stream flow, lake level, or site access may affect the project and the consideration of these factors;

iv. The data quality objectives for measurement of data that describe in quantitative and qualitative terms how the data meet the project objectives of precision, accuracy, completeness, comparability, and representativeness;

v. The types of samples scheduled for collection;

vi. The sampling frequency;

vii. The sampling periods;

viii. The sampling locations and rationale for the site selection, how site locations are benchmarked, including scaled maps indicating approximate location of sites; and

ix. A list of the field equipment, including tolerance range and any other manufacturer's specifications relating to accuracy and precision.

b. The Department may accept a SAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be samples, the type of surface water, and the purpose of the sampling.

3. The monitoring entity may include any of the following in the QAP or SAP:

a. The name, title, and role of each person and organization involved in the project, identifying specific roles and responsibilities for carrying out the procedures identified in the QAP and SAP;
b. A distribution list of each individual and organization receiving a copy of the approved QAP and SAP;
c. A table of contents;
d. A health and safety plan;
e. The inspection and acceptance requirements for supplies;
f. The data acquisition that describes types of data not obtained through this monitoring activity, but used in the project;
g. The audits and response actions that describe how field, laboratory, and data management activities and sampling personnel are evaluated to ensure data quality, including a description of how the project will correct any problems identified during these assessments; and
h. The waste disposal methods that identify wastes generated in sampling and methods for disposal of those wastes.

4. Exceptions. The Department may determine that the following data are also credible and relevant to an impaired water identification or TMDL decision when data were collected, provided the conditions in subsections (A)(5), (A)(6), and (B) are met, and where the data were collected in the surface water or segment being evaluated for impairment:
a. The data were collected before July 12, 2002 and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2);
b. The data were collected after July 12, 2002 as part of an ongoing monitoring effort by a governmental agency and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2); or
c. The instream water quality data were or are collected under the terms of a NPDES or AZPDES permit or a compliance order issued by the Department or EPA, a consent decree signed by the Department or EPA, or a sampling program approved by the Department or EPA under WQARF or CERCLA, and the Department determines that the data yield results of comparable reliability to data collected under subsections (A)(1) and (A)(2).

5. Data collection, preservation, and analytical procedures. The monitoring entity shall collect, preserve, and analyze data using methods of sample collection, preservation, and analysis established under A.A.C. R9-14-610.
6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.

B. Documentation for data submission. The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
2. The applicable dates of the QAP and SAP, including any revisions;
3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
6. The data reporting unit of measure;
7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.

C. Recordkeeping. The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-603. General Data Interpretation Requirements

A. The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
a. When the analytical result is reported as <X, where X is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;

2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake samples are from multiple depths, use the following resultant value to represent the specific dataset:
   a. The appropriate measure of central tendency for the dataset for:
      i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
      ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
      iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
      iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
      v. The surface water quality standard for radiochemicals in R18-11-109(G); or
      vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
   b. The maximum value of the dataset for:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
      iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
   c. The worst case measurement of the dataset for:
      i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
      ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.

B. The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
2. Uncorrected data transcription errors or laboratory errors, and
3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.

C. The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.

D. The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Nonpoint Sources (BASINS),
2. Fundamental statistics, including regression analysis,
3. Hydrologic Simulation Program-Fortran (HSPF),
4. Spreadsheet modeling, and
5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List

A. The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:
   a. The Planning List if it meets any of the criteria described in subsection (D), or
   b. The 303(d) List if it meets the criteria for listing described in subsection (E).
2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.

B. When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.

C. Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or

3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.

D. Planning List.

1. The Department shall:
   a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
   b. Provide the Planning List to EPA; and
   c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in R18-11-605(D) to determine the source of the impairment.
2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
   a. A TMDL is completed for the pollutant and approved by EPA;
   b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      i. Does not meet the credible data requirements of R18-11-602, or
      ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
   c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
      iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
      iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
   d. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act, but insufficient current or original monitoring data exist to determine whether the surface water or segment will meet current surface water quality standards;
   e. Trend analysis using credible and scientifically defensible data indicate that surface water quality standards may be exceeded by the next assessment cycle;
   f. The exceedance of surface water quality standards is due to pollution, but not a pollutant;
   g. Existing data were analyzed using methods with laboratory detection limits above the numeric surface water quality standard but analytical methods with lower laboratory detection limits are available;
   h. The surface water or segment is expected to attain its designated use by the next assessment as a result of existing or proposed technology-based effluent limitations or other pollution control requirements under local, state, or federal authority. The appropriate entity shall provide the Department with the following documentation to support placement on the Planning List:
      i. Verification that discharge controls are required and enforceable;
      ii. Controls are specific to the surface water or segment, and pollutant of concern;
      iii. Controls are in place or scheduled for implementation; and
      iv. There are assurances that the controls are sufficient to bring about attainment of water quality standards by the next 303(d) List submission; or
   i. The surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are no federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.

E. 303(d) List. The Department shall:

1. Place a surface water or segment on the 303(d) List if the Department determines:
   a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
   b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting

A. The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.

B. Weight-of-evidence approach.

1. The Department shall consider the following concepts when evaluating data:
   a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
   b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or seasonal conditions, the Department may place the surface water or segment on the Planning List;
   c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and represen-

tativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:

i. The age of the measurements. Newer measurements are weighted heavier than older measurements, unless the older measurements are more representative of critical flow conditions;

ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or

iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.

2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:

a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);

b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);

c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:

i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;

ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and

iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.

d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.

e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indicates that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:

i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;

ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or

iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.

3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.

C. Planning List.

1. When evaluating a surface water or segment for placement on the Planning List.

a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and

b. Determine numeric water quality standards exceedances. The Department shall:

i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or

ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation: $(X \geq x \mid n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 80 percent.

Table 1. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43

32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47
66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
   a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
   b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
   c. The surface water quality standard for radiochemicals in R18-11-109(G);
   d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
   e. The surface water quality standard for pH under R18-11-109(B); or
   f. The following surface water quality standards in R18-11-112:
      i. Single sample maximum standards for nitrogen and phosphorus,
      ii. All metals except chromium, or
      iii. Turbidity.
3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.

D. 303(d) List.
1. When evaluating a surface water or segment for placement on the 303(d) List.
   a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
   b. Determine numeric water quality standards exceedances. The Department shall:
      i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or
      ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation: $(X \geq x | n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 90 percent.

Table 2. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50

80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54
114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:
   a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).
   b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.
3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).

E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.
1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
   a. Monitoring activities indicate that:
      i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
      ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
   b. All pollutants for the surface water or segment are delisted.
2. 303(d) List. The Department shall:
   a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      i. The Department developed, and EPA approved, a TMDL for the pollutant;
      ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;
      iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
      v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
      vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
   b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
   c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
   d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
      i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or

ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments

A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
1. A change in a water quality standard;
2. The date the surface water or segment was added to the 303(d) List;
3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
4. The complexity of the TMDL;
5. State, federal, and tribal policies and priorities; and
6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.

B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
1. Consider an impaired surface water or segment a high priority if:
   a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      i. The number and type of designated uses impaired;
      ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      iii. The pollutant causing the impairment, or
      iv. The severity, magnitude, and duration the surface water quality standard was exceeded;
   b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
   c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
   d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
   e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
   f. There is significant public interest and support for the development of a TMDL;
   g. The surface water or segment has important recreational and economic significance to the public; or
   h. The pollutant is listed for eight years or more.
2. Consider an impaired surface water or segment a medium priority if:
   a. The surface water or segment fails to meet more than one designated use;
   b. The pollutant exceeds more than one surface water quality standard;
   c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;
   d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
   e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
   f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
3. Consider an impaired surface water or segment a low priority if:
   a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
   b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
   c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
      i. Recently instituted treatment levels or best management practices in the drainage area,
      ii. Discharges or activities related to the impairment have ceased, or
      iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;
   d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
   e. The pollutant poses a low ecological and human health risk;
   f. Insufficient data exist to determine the source of the pollutant load;
   g. The uncertainty of timely coordination with national and international entities concerning international waters;
   h. Naturally occurring conditions are a major contributor to the impairment; and
   i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.

C. The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.

D. The Department may shift priority ranking of a surface water or segment for any of the following reasons:
1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;
4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
5. Reduction or increase in staff or budget involved in the TMDL development.

E. The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:
1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
3. There is community involvement and interest in completing the TMDL, or
4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

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 regulating 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 not 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. Use 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 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 shall establish by rule a fee as a condition of licensure, including a maximum fee. 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, articles 8 and 9 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 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.

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 the fees.

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.

49-202. 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 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.

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.

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 adopting 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 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.

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 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.

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 September 29, 2021. 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.

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.

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4

Amend: R20-4-101, R20-4-102, R20-4-104, R20-4-105, R20-4-106, R20-4-107, Table A

Repeal: R20-4-103

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 4

Amend: R20-4-101, R20-4-102, R20-4-104, R20-4-105, R20-4-106, R20-4-107, Table A

Repeal: R20-4-103

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to repeal one (1) rule and amend six (6) rules and one (1) table in Title 20, Chapter 4, Article 1 regarding general provisions related to financial institutions. The amendments are intended to improve clarity and effectiveness of the rules, along with further aligning the Division of Financial Institutions with the Division of Insurance Rules found in Title 20, Chapter 6.

The Department intends on repealing R20-4-103 because the subject matter is duplicative. The rule sets out requirements for licenses and applicants to provide fingerprint cards to the Department, this requirement is already found in A.R.S. § 6-123.01

The Department proposes the following amendments:

- **All rules**
    - The Department will change the term Superintendent with Director

- **R20-4-102**
  - The Department will amend existing definitions and add three new definitions white removing one.
- **R20-4-105**
  - The Department will correct a statutory reference.
- **R20-4-107**
  - The Department will amend the rules to reflect the Licensing Time Frames found in the Insurance Division at R20-6-708.
- **Table A**
  - The Department will amend the table to change the length of time that the Department has to complete both an administrative completeness review and substantive review for banks, bank trust departments, credit unions, debt management entities, advance fee loan brokers, collection agencies, and sales finance companies. The Department relayed to Council staff that the increase in timeframe was a result of the merger between the Arizona Department of Financial Institutions and the Arizona Department of Insurance. The table is being amended so the timeframes will be closer aligned with the Insurance division and easier for the Department to manage than two substantially different timeframes.

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 any study relevant to this rulemaking.

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

According to the Department, the rulemaking is not designed to change any conduct. Instead, it is necessary to reflect the new structure of the Department, to replace the title "Superintendent" with "Director," to add definitions that reflect current industry practices, to synchronize the licensing time-frames rules for the two divisions of the Department, and to incorporate Real Estate Appraisal into the Financial Institutions Division Licensing Time-frames table. No additional costs are anticipated to be imposed on licensees.

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 believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking, which is to update the Sections of Article 1.

The Department does not expect the amount of time the Department has to review licenses to increase the burden or costs on stakeholders.

6. What are the economic impacts on stakeholders?

Licensees of the Department, which include financial institutions, financial enterprises, collection agencies, real estate appraisal, and sales finance companies, are not expected to incur any costs with the rulemaking. The rulemaking is intended to update rules to reflect the new structure of the Department and to add definitions that reflect current industry practices. While the Department is increasing the timeframe that the Department has to review applications, the Department has indicated that they do not predict any costs to be incurred by applicants and that no stakeholders raised concerns about the increased timeframe.

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

The Department indicates that there were three changes made between the Notice of Proposed Rulemaking Published in the Administrative Register on November 8, 2024 and the Notice of Final Rulemaking now before the council.

The changes made by the Department are not substantive within the meaning of A.R.S. § 41-1025 because the changes were related to formatting, a typo, and a minor change in sentence Structure. These changes do not change the subject matter or change the interest of any person.

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

The Department indicates it did not receive any public 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?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines “general permit" to mean “a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct

identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department has indicated that these rules do not require a permit or a license. R20-4-107 and accompanying Table A (Licensing Time-Frames) do not place any requirements for obtaining a license or certificate, the rule only covers the Department's procedures for processing applications, not the specific requirements for the types of licenses identified in the table. These requirements are found in other rules and statutes. Council staff agrees with the Department's indication that A.R.S. § 41-1037 does not apply.

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 there are no corresponding federal laws.

11. Conclusion

This regular rulemaking by the Department seeks to amend six (6) rules and one (1) table and to repeal one (1) rule regarding financial institutions. The Department specifically seeks to amend the rules to include updated terminology. The Department also seeks to amend the rules to align the Financial Institutions Division with the Insurance Division (these were two separate agencies prior to merging in 2020); these amendments would increase the amount of time that the Department has to review applications for licenses. The Department has indicated that no stakeholders raised concerns with the increase in review time. Additionally, the Department intends on repealing a rule concerning fingerprinting because the requirements were duplicative of those found in statute.

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.

Arizona Department of Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie Hobbs
Governor

Barbara D. Richardson
Director

December 18, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Financial Institutions Division
Article 1 Notice of Final Rulemaking

Dear Chairperson Klein:

Please find enclosed the Notice of Final Rulemaking for Article 1 (General) being submitted by the Arizona Department of Insurance and Financial Institutions, Financial Institutions Division ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

a. The close of record date for the Notice of Proposed Rulemaking was December 8, 2024.
b. This rulemaking does not relate to a Five-Year Review Report.
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 additional full-time employees are necessary to implement and enforce the rules. Consequently, no notification has been made to the Joint Legislative Budget Committee.
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 general and specific statutes authorizing the rulemaking; and
iv. Permission from the Governor's Office to submit this Notice of Final Rulemaking required by A.R.S. § 41-1039(B).

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.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

– FINANCIAL INSTITUTIONS

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the governor on:

December 18, 2024

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

R20-4-101	Amend
R20-4-102	Amend
R20-4-103	Repeal
R20-4-104	Amend
R20-4-105	Amend
R20-4-106	Amend
R20-4-107	Amend
Table A	Amend

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

Authorizing statute: A.R.S. § A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-121, 6-123(1), (3) and (4), 6-123.01, and 41-1073

4. The effective date of the rule:

This rule shall become effective 60 days after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A).

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 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 the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 3332, Issue Date: November 8, 2024, Issue Number: 45, File number: R24-222

Notice of Proposed Rulemaking: 30 A.A.R. 3285, Issue Date: November 8, 2024, Issue Number: 45, File number: R24-216

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

Name: Mary E. Kosinski

Title: Asst. Regulatory Legal Affairs Officer

Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, Arizona 85007-2630
Tel: (602)364-3476
Email: mary.kosinski@difi.az.gov
Website: https://difi.az.gov

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

The subject matter of these rules is the authorized activities of the Director of the Department of Insurance and Financial Institutions pertaining to the Financial Institutions Division (the "Department"), and the interpretation and application of Arizona statutes and rules administered by the Department. The rules augment the statutory sections regulating licensees of the Department found at Title 6, Title 32, Chapters 9 and 36, and Title 44, Chapter 2.1. This rulemaking amends Title 6, Article 1 as follows:

R20-4-101 (Scope of Article) will be amended to replace "Superintendent" with "Director."

R20-4-102 (Definitions) will be amended to:

- update the name of the Department;
- replace "Superintendent" with "Director;"
- add statutory references in the definition of "Affiliate;"
- add new definitions for "Back-office location," "Department," "Director," "Loan underwriting," and "Remote work location;"
- update the definitions for "Branch office," "Directly or indirectly makes, negotiates, or offers to make or negotiate," "Employee," "Generally

accepted

accounting principles," "Loan processing," and "Reasonable investigation of the background;" and

- remove the definition for "Holds out to the public."

R20-4-103 (Fingerprints) will be repealed as redundant (*See* A.R.S. 6-123.01).

R20-4-104 (Acceptance of Other Forms) will be amended to replace "Superintendent" with

"Director;" and to remove "Financial Institutions" as the name of the Department.

R20-4-105 (Claims Against a Deposit in Place of Bond) will be amended to replace "Superintendent" with "Director," and to correct a legal reference.

R20-4-106 (Bankruptcy) will be amended to replace "Superintendent" with "Director."

R20-4-107 (Licensing Time-frames) will be amended to track with the Insurance Division

Section on Licensing Time-frames (R20-6-708) for consistency between the Insurance and

Financial Institutions divisions.

Table A (Licensing Time-frames) will be amended to update timeframes and to add "Real Estate Appraisal" as a license type.

This rulemaking does not relate to a prior Five-Year Review Report. The prior report for this Article in 2018 did not recommend any changes to the Article.

8. 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

9. 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

10. A 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. Instead, it is necessary to reflect the new structure of the Department, to replace the title "Superintendent" with "Director," to add definitions that reflect current industry practices, to synchronize the licensing time-frames rules for the two divisions of the Department, and to incorporate Real Estate Appraisal into the Financial Institutions Division Licensing Time-frames table.

Pursuant to A.R.S. § 41-1055(A)(2):

No additional costs are anticipated to be imposed on licensees.

Pursuant to A.R.S. § 41-1055(A)(3):

An economic, small business and consumer impact summary accompanies the submission of the Final Rulemaking to the Governor's Regulatory Review Council.

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

a) The Department revised the definition for "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" to remove the bullet points listed under subsection (a)(1) to eliminate a formatting problem. The bullet points are, instead, incorporated into the language of the subsection.

b) The Department revised the definition for "Employee" in subsection (f) to correct a reference within the subsection from "(15)(a)" to "(16)(a)."
c) The Department modified the definition for "Reasonable investigation of the background" in subsection (f) from "Inquiries" to "Makes inquiries."

The Department does not consider any of the changes to be substantive within the meaning of A.R.S. § 41-1025(B). Instead, they are only to correct formatting issues and typos.

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Not applicable

13. 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:

Not applicable

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 rules in Article 1 do not require a permit. Instead, they contain general guidance that governs the activities of the Director and the interpretation of Arizona statutes and rules administered by the Director.

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 rules in Article 1.

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

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

Not applicable

15. 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

16. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – FINANCIAL INSTITUTIONS

ARTICLE 1. GENERAL

Section

ARTICLE 1. GENERAL

R20-4-101. Scope of Article

The rules in this Article apply to all activities of the ~~Superintendent~~ Director and to the interpretation of all Arizona statutes and rules administered by the ~~Superintendent.~~ Director.

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
   a. Is knowledgeable about the licensee's Arizona activities;
   b. Supervises compliance with:
      i. The laws enforced by the ~~Department of Financial Institutions~~ Department of Insurance and Financial Institutions - Financial Institutions Division as

they relate to the licensee, and

ii. Other applicable laws and rules; and

c. Has sufficient authority to ensure compliance.

2. "Affiliate" ~~has the meaning stated at~~ means the same as defined under A.R.S. § 6-901~~.~~ , 6-941, 6-971, and 6-991.

3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.

4. ~~"Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.~~

"Back-office location" means a location that:

a. Is dedicated to administrative and operational functions of the licensee that are incidental to the activity requiring licensure;

b. Does not involve interaction with the public whether in-person, telephonically, or electronically;

c. Is subject to the licensee's comprehensive written information security plan; and

d. Is able to produce records associated with the location as part of a Department investigation or examination.

5. ~~"Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.~~ "Branch office" means, unless otherwise provided by law, a business location which is not the licensee's principal place of business, is maintained by the licensee, and where the licensee conducts regulated activities. A branch office does not include a "back-office location" or "remote work location" as defined in this Section.

6. ~~"Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time~~

~~during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:~~

~~a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;~~

~~b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;~~

~~c. Insurance commissions;~~

~~d. Contingent or additional interest, including interest based on net operating income; or~~

~~e. Equity participation.~~

"Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.

7. ~~"Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.~~

"Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:

a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default

interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;

b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;

c. Insurance commissions;

d. Contingent or additional interest, including interest based on net operating income; or

e. Equity participation.

8. ~~"Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.~~

"Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.

9. ~~"Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.~~

"Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.

10. ~~"Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a~~

~~servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.~~

"Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.

11. ~~"Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:~~
    a. ~~Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;~~
        i. ~~To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or~~
        ii. ~~To a borrower, concerning the location or identity of potential investors or lenders; or~~
    b. ~~Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and~~
    c. ~~Processing a loan; but~~
    d. ~~"Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:~~
        i. ~~Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;~~

~~ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;~~

~~iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;~~

~~iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.~~

"Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.

12. ~~"Electronic record" has the meaning stated at A.R.S. § 44-7002(7).~~
"Department" means the same as defined under A.R.S. § 6-101(5).
13. ~~"Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:~~

~~a. The person is entitled to payment, or is paid, by the licensee;~~

~~b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;~~

~~c. The licensee has the right to hire and fire the employee and the employee's assistants;~~

~~d. The licensee directs the methods and procedures for performing the employee's job;~~

~~e. The licensee supervises the employee's business conduct and the~~

~~employee's compliance with applicable laws and rules; and~~

~~f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.~~

"Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in sA.R.S. §§ 6-901, 6-941, or 6-971:

a. Includes any of the following:

i. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction to an investor, concerning the location or identity of potential borrowers if the consulting or advisory services include direct interaction, including by telephone or electronic means, with a potential borrower that results in a request or obtaining a consumer's date of birth, social security number, credit report, employment information, work history, or account information held in any depository, trust, or investment account:

ii. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction to a consumer, concerning the location or identity of potential lenders if the consulting or advisory services include a representation with regard to pre-qualification, approval, rate, terms, or conditions of a loan;

iii. Preparing or providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;

iv. Loan processing; or

v. Loan underwriting.

b. Does not include:

i. Providing technological, mechanical, or word processing services to

prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;

ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;

iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines; or

iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.

14. ~~"Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.~~

"Director" means the same as defined under A.R.S. § 20-102.

15. ~~"Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate~~

~~of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.~~

"Electronic record" means the same as defined under A.R.S. § 44-7002(7).

16. ~~"Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.~~

"Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:

a. The person is entitled to payment, or is paid, by the licensee;
b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes, if applicable;
c. The licensee has the right to hire and fire the employee and the employee's assistants;
d. The licensee directs the methods and procedures for performing the employee's job;
e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
f. The rights and duties under subsections (16)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.

17. ~~"Holds out to the public," as used in this Section's definition of "branch office," means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Holds out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Holds out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.~~

"Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.

18. ~~"Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.~~

"Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.

19. ~~"Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.~~

"Generally accepted accounting principles" means United States Generally Accepted Accounting Principles issued by the Financial Accounting Standards Board or the International Financial Reporting Standards issued by the International Accounting Standards Board.

20. ~~"Person" means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.~~

"Loan," as that term is used in A.R.S. §§ 6-126(D)(5) and (7), means all loans negotiated or closed that are secured by Arizona real property.

21. ~~"Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.~~

"Loan Processing" means requesting, collecting, receiving, or reviewing a loan application's supporting documents for use in underwriting, and communicating with the consumer to obtain information necessary for making a credit decision.

22. ~~"Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:~~

~~a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;~~

~~b. Obtains a completed Employment Eligibility Verification (Form I-9);~~

~~c. Obtains a completed and signed employment application;~~

~~d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;~~

~~e. Consults with the applicant's most recent or next most recent employer, if any;~~

~~f. Inquiries regarding the applicant's qualifications and competence for the position;~~

~~g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and~~

~~h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.~~

"Loan underwriting" means analyzing information in connection with the making of a credit decision.

23. ~~"Record" has the meaning stated at A.R.S. § 44-7002(13).~~

"Person" means a natural person, including a sole proprietor, or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.

24. ~~"Registered to do business in this state" means:~~

~~a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;~~

~~b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;~~

~~c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;~~

~~d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;~~

~~e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:~~

~~i. All the current amendments, or~~

~~ii. A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;~~

~~f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;~~

~~g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;~~

~~h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or~~

~~i. The entity is exempt from registration.~~

"Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.

25. ~~"Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.~~
"Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
    a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
    b. Obtains a completed Employment Eligibility Verification (Form I-9), if applicable;
    c. Obtains a completed and signed employment application, if applicable;
    d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
    e. Consults with the applicant's most recent or next most recent employer, if any;
    f. Makes inquiries regarding the applicant's qualifications and competence for the position;
    g. If for a loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
    h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
26. ~~"Resident of this state" means a natural person domiciled in Arizona.~~
"Record" means the same as defined under A.R.S. § 44-7002(13).
27. ~~"Responsible individual" or "responsible person", as those terms are used in~~

~~A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:~~

~~a. Lives in Arizona during the entire period of designation as the responsible individual on a license;~~

~~b. Is in active management of a licensee's affairs;~~

~~c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and~~

~~d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.~~

"Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.

28. "Registered to do business in this state" means:

a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;

b. If a foreign corporation, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;

c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;

d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;

e. If a trust, it delivers to the Director an executed copy of the trust instrument creating the trust together with:

i. All the current amendments, or

ii. A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;

f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;

g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is

registered with the Arizona Secretary of State's office under A.R.S. Title 29;

h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or

i. The entity is exempt from registration.

29. "Remote work location" means a location at which the employees (including licensed loan originators) of a licensee may conduct licensed activities other than the principal place of business or branch office. Licensed activities from a remote work location are permitted when under the supervision of the licensee and when all of the following apply:

a. The licensee has written policies and procedures for supervision of employees working from their residence or a location other than a licensed location,

b. Access to company platforms and customer information shall be in accordance with the licensee's comprehensive written information security plan; and

c. Physical records shall not be maintained at a remote work location.

30. "Resident of this state" means a natural person domiciled in Arizona.

31. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:

a. Is in active management of a licensee's affairs; and

b. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973.

R20-4-103. ~~Fingerprints~~ Repealed

~~**A.** A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.~~

~~**B.** A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.~~

~~**C.** A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:~~

~~1. A municipal police department,~~

~~2. A local sheriff's office, or~~

~~3. Another law enforcement authority recognized by the Superintendent.~~

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the ~~Superintendent~~ Director has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department ~~of Financial Institutions~~ form. The ~~Superintendent's~~ Director's exercise of the discretion to accept alternative forms does not limit the ~~Superintendent's~~ Director's power to require additional information necessary to complete an application or other form.

R20-4-105. Claims Against a Deposit in Place of Bond

A. As used in this Section:

1. "Deposit" means cash or alternatives to cash deposited by a licensee with the ~~Superintendent~~ Director in place of a bond.
2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the ~~Superintendent.~~ Director.
3. "Verified claim" means a claim filed with the ~~Superintendent~~ Director under subsection (B).
4. "Award" means an amount of money granted under subsection (F).

B. A person may file a claim against a deposit by delivering documentation of the claim to the ~~Superintendent.~~ Director. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:

1. Against a depositor;
2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
3. Documented by:
   a. A certified copy of the complaint in the action;
   b. A certified copy of the judgment in the action;
   c. A statement that execution of the judgment has not been stayed, or an

explanation of the terms and reason for any stay;

d. A statement of any amounts recovered on the judgment; and

e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.

C. A claimant shall file a claim with the ~~Superintendent,~~ Director, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under ~~R20-4-1208.~~ A.R.S. § 41-1092.03(B).

D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the ~~Superintendent~~ Director under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.

E. The ~~Superintendent~~ Director shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:

1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
3. The judgment's execution has been stayed for any reason;
4. The judgment was procured through fraud or collusion;
5. The judgment has been satisfied from other sources; or
6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.

F. If the ~~Superintendent~~ Director grants a verified claim, the ~~Superintendent~~ Director

shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:

1. Attorney's fees, and
2. Amounts previously paid on the judgment.

G. A person injured by a depositor shall give the ~~Superintendent~~ Director written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the ~~Superintendent~~ Director upon request.

H. If the ~~Superintendent~~ Director grants a verified claim under subsection (F), the ~~Superintendent~~ Director shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the ~~Superintendent~~ Director has not received notice of another pending civil action under subsection (G).

I. If given notice under subsection (G), the ~~Superintendent~~ Director shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The ~~Superintendent~~ Director shall determine award amounts for each claim of which the ~~Superintendent~~ Director has notice, and authorize payment, as follows:

1. If the deposit is sufficient to satisfy all claims under subsection (F), the ~~Superintendent~~ Director shall authorize its release as described in subsection (H).
2. If the deposit is not sufficient to satisfy all claims under subsection (F), the ~~Superintendent~~ Director shall calculate the award on each claim as follows:
    a. Each granted claim shall receive a pro rata share of the total deposit.
    b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
        i. The numerator of the fraction is the amount of the ~~Superintendent's~~ Director's award for the verified claim.
        ii. The denominator of the fraction is the sum of the amount of the ~~Superintendent's~~ Director's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same

depositor disclosed to the ~~Superintendent~~ Director under subsection (G).

c. The ~~Superintendent~~ Director shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.

J. A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The ~~Superintendent~~ Director shall not release any part of a deposit to a depositor or former licensee until the ~~Superintendent~~ Director determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The ~~Superintendent~~ Director shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the ~~Superintendent~~ Director shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.

K. The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certified copy of the court's order to the ~~Superintendent.~~ Director. The copy may be uncertified if the receiver is the ~~Superintendent~~ Director or any other officer or agency of the state of Arizona. The ~~Superintendent~~ Director shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the ~~Superintendent~~ Director if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the ~~Superintendent~~ Director a copy of the:

1. Petition for relief,
2. Schedule of assets and liabilities,

3. Statement of financial affairs,
4. List of creditors, and
5. Plan of reorganization.

R20-4-107. Licensing Time-frames

A. ~~As used in this Section, "application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.~~

Definitions. The definitions in A.R.S. § 41-1072 and the following definitions apply to this Section.

1. "Application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.
2. "License" means the same as defined under A.R.S. § 41-1001(13).

B. ~~The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame.~~ The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.

1. ~~Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.~~
2. ~~An applicant whose application is incomplete shall supply the missing information within 60 days after the date of the notice. If an applicant shows good cause in writing before the expiration of the 60-day time limit, the Superintendent~~

~~Director shall extend the period for administrative completion of an application. The administrative completeness review time-frame stops running on the postmark date of the Department's written notice of an incomplete application, and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department shall reject the application and close the file. An applicant may reapply.~~

~~3. The substantive review time-frame begins to run on the postmark date of the Department's written notice that the application is administratively complete.~~

~~4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal in the form required by A.R.S. § 41-1076.~~

~~5. The Department shall calculate time limits prescribed in this Section under R2-19-107.~~

C. ~~The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.~~ Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing whether the application is complete or deficient.

1. If the application is deficient, the Department shall issue a notice of deficiency to the applicant which shall include a comprehensive list of the specific deficiencies. If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives an adequate response from the applicant.

2. The Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.
3. If an applicant does not adequately respond to each specified deficiency in a notice of deficiency issued under subsection (C)(1) within 60 days after the date of a notice of deficiency the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.

D. Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.

1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives an adequate response from the applicant.
2. The Department is not precluded from issuing supplemental requests by mutual agreement for additional information, during the substantive review.
3. If an applicant does not adequately respond to each component or item of information required in a comprehensive written request or a supplemental request for additional information, within 60 days after the date of a comprehensive written request, or within 60 days after the date of the supplemental request for additional information, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.

E. Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide to the applicant a written notice that complies with the provisions of A.R.S. § 41-1076.

F. In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal

holiday.

G. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	~~45~~ 75	~~45~~ 75	~~90~~ 150
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	~~45~~ 60	~~45~~ 60	~~90~~ 120
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	~~60~~ 150	~~60~~ 150	~~120~~ 300
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	~~30~~ 60	~~30~~ 60	~~60~~ 120

8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	~~30~~ 60	~~30~~ 60	~~60~~ 120
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	~~30~~ 60	~~15~~ 60	~~45~~ 120
~~**17**~~	~~Motor Vehicle Dealer~~	~~A.R.S. § 44-281, et seq.~~			
	~~Initial Application~~	~~A.R.S. § 44-282(B)~~	~~30~~	~~15~~	~~45~~
~~**18**~~ **17**	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	~~30~~ 60	~~15~~ 60	~~45~~ 120

~~19~~ **18**	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	~~45~~ 60	~~45~~ 60	~~90~~ 120
~~20~~ **19**	Loan Originators	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120
20	Real Estate Appraisal	A.R.S. § 32-3601, et seq.			
	Initial Application	A.R.S. § 32-3611	~~45~~ 60	~~45~~ 60	~~90~~ 120

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 20. Commerce, Financial Institutions, and Insurance
Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The subject matter of these rules is the authorized activities of the Director of the Department of Insurance and Financial Institutions pertaining to the Financial Institutions Division (the "Department"), and the interpretation and application of Arizona statutes and rules administered by the Department. This rulemaking amends Title 6, Article 1 (General) as follows:

R20-4-101 (Scope of Article) will be amended to replace "Superintendent" with "Director."

R20-4-102 (Definitions) will be amended to:

- update the name of the Department;
- replace "Superintendent" with "Director;"
- add statutory references in the definition of "Affiliate;"
- add new definitions for "Back-office location," "Department," "Director," "Loan underwriting," and "Remote work location;"
- update the definitions for "Branch office," "Directly or indirectly makes, negotiates, or offers to make or negotiate," "Employee," "Generally accepted ac-counting principles," "Loan processing," and "Reasonable investigation of the background;" and
- remove the definition for "Holds out to the public."

R20-4-103 (Fingerprints) will be repealed as redundant (*See* A.R.S. 6-123.01).

R20-4-104 (Acceptance of Other Forms) will be amended to replace "Superintendent" with "Director;" and to remove "Financial Institutions" as the name of the Department.

R20-4-105 (Claims Against a Deposit in Place of Bond) will be amended to replace "Superintendent" with "Director," and to correct a legal reference.

R20-4-106 (Bankruptcy) will be amended to replace "Superintendent" with "Director."

R20-4-107 (Licensing Time-frames) will be amended to track with the Insurance Division Section on Licensing Time-frames (R20-6-708) for consistency between the Insurance and Financial Institutions divisions.
Table A (Licensing Time-frames) will be amended to update timeframes and to add "Real Estate Appraisal" as a license type.

This rulemaking does not relate to a prior Five-Year Review Report. The prior report for this Article in 2018 did not recommend any changes to the Article.

Questions about this Economic Impact Statement may 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.
The rules augment the statutory sections regulating licensees of the Department found at:
Title 6: Financial Institutions (Banks, Credit Unions, Trust Companies, Savings and Loan Associations, Consumer Lenders, International Banking Facilities, and Financial Institution Holding Companies under the jurisdiction of the Department) and Financial Enterprises (Debt Management Companies, Escrow Agents, Mortgage Brokers, Mortgage Bankers, Loan Originators, Money Transmitters, Advance Fee Loan Brokers, and Premium Finance Companies);
Title 32, Chapter 9: Collection Agencies;
Title 32, Chapter 36: Real Estate Appraisal; and
Title 44, Chapter 2.1: Sales Finance Companies.

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 changes.

(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.

No additional costs are anticipated to be imposed upon licensees. The Article contains Sections that apply to all licensees. These Sections are being updated to reflect the new structure of the Department and to add definitions that reflect current industry practices. The Licensing Time-Frames are being revised to mirror the Insurance Division rule and to update the Licensing Time-Frames table.

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 licensees. Likewise, the Department does not anticipate any impact on 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.

Many of the licensees regulated by the Department would qualify as small businesses within the meaning of A.R.S. § 41-1001(23).

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The Department did not receive any information from licensees on administrative or other costs required for compliance with the proposed rulemaking. The Department does not anticipate that any costs will be required for compliance with the proposed rulemaking because it merely updates the rules to conform to the current agency structure and to add definitions and license types.

(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.

The Department does not believe that any of the methods listed at A.R.S. § 41-1035 are useful to reduce the impact of the rulemaking on small businesses.

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

The Department does not expect any appreciable increase in either costs or benefits to private persons and consumers created by this rulemaking. The costs and benefits to private persons and consumers are expected to be the same as those identified during the original adoption of these rules.

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 believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking which is to update the Sections of Article 1.

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.

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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS

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*.

At the request of the Department a correction has been made to Section R20-4-1220 (Supp. 24-1).

No other changes have been made to this Chapter since Supp. 23-3.

Questions about these rules? Contact:

Department:	Department of Insurance and Financial Institutions
Address:	100 N. 15th Ave., Suite 261 Phoenix, AZ 85007-2630
Website:	https://difi.az.gov
Name:	Mary E. Kosinski
Telephone:	(602) 364-3476
Email:	mary.kosinski@difi.az.gov

The release of this Chapter in Supp. 24-1 replaces Supp. 23-3, 1-49 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. 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 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, 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.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

Administrative Rules Division
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TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS

Authority: A.R.S. § 20-124

Supp. 24-1

Editor's Note: The name of the Arizona Department of Financial Institutions was changed to the Department of Insurance and Financial Institutions under Laws 2019, Ch. 252, effective July 1, 2020 (Supp. 22-2).

Editor's Note: The Banking Department's name was changed to the Arizona Department of Financial Institutions under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Ch. 188, effective January 1, 2006 (Supp. 06-1).

Editor's Note: Title 20, formerly Commerce, Banking, and Insurance, is now Commerce, Financial Institutions, and Insurance. This change became effective when the Banking Department changed its name to the Department of Financial Institutions, effective January 1, 2006 (Supp. 06-1).

20 A.A.C. 4, consisting of R20-4-101 through R20-4-106, R20-4-201 through R20-4-215, R20-4-301 through R20-4-331, R20-4-401 through R20-4-402, R20-4-501 through R20-4-536, R20-4-601 through R20-4-620, R20-4-701 through R20-4-707, R20-4-801 through R20-4-816, R20-4-901 through R20-4-924, R20-4-1001, R20-4-1101 through R20-4-1102, R20-4-1201 through R20-4-1220, R20-4-1401 through R20-4-1410, R20-4-1501 through R20-4-1530, R20-4-1601 through R20-4-1604, and R20-4-1701 through R20-4-1706, recodified from 4 A.A.C. 4, consisting of R4-4-101 through R4-4-106, R4-4-201 through R4-4-215, R4-4-301 through R4-4-331, R4-4-401 through R4-4-402, R4-4-501 through R4-4-536, R4-4-601 through R4-4-620, R4-4-701 through R4-4-707, R4-4-801 through R4-4-816, R4-4-901 through R4-4-924, R4-4-1001, R4-4-1101 through R4-4-1102, R4-4-1201 through R4-4-1220, R4-4-1401 through R4-4-1410, R4-4-1501 through R4-4-1530, R4-4-1601 through R4-4-1604, and R4-4-1701 through R4-4-1706, pursuant to R1-1-102 (Supp. 95-1).

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R20-4-101 through R4-4-106 recodified from R4-4-101 through R4-4-106 (Supp. 95-1).

Article 1, consisting of Sections R4-4-101 through R4-4-106 adopted effective August 16, 1991 (Supp. 91-3).

Article 1, consisting of Sections R4-4-101 through R4-4-104, repealed effective August 16, 1991 (Supp. 91-3).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

ARTICLE 3. EXPIRED

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ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6, consisting of Section R4-4-601, repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

ARTICLE 7. ESCROW AGENTS

ARTICLE 8. TRUST COMPANIES

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ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR

ARTICLE 13. LOAN ORIGINATORS

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired on April 21, 2011. New Sections R20-4-1301 through R20-4-1305 were made by final rulemaking on effective April 22, 2011. Emergency rules removed from this Chapter for clarity. (Supp. 15-1).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency expired April 21, 2011; new Article consisting of Sections R20-4-1301 through R20-4-1305, made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, emergency rulemaking renewed at 16 A.A.R. 2165, effective October 24, 2010 for an additional 180 days (Supp. 10-4).

Article 13, consisting of Sections R20-4-1301 through R20-4-1305, made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2).

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ARTICLE 18. MORTGAGE BANKERS

Article 18, consisting of Sections R20-4-1801 through R20-4-1812, adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

Article 19, consisting of Sections R20-4-1901 through R20-4-1911, adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

ARTICLE 1. GENERAL

R20-4-101. Scope of Article

The rules in this Article apply to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent.

Historical Note

Former Rule 1. Former R4-4-101 repealed, new R4-4-101 adopted effective August 16, 1991 (Supp. 91-3). R20-4-101 recodified from R4-4-101 (Supp. 95-1).

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
   a. Is knowledgeable about the licensee's Arizona activities;
   b. Supervises compliance with:
      i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
      ii. Other applicable laws and rules; and
   c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
   a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
   b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
   c. Insurance commissions;
   d. Contingent or additional interest, including interest based on net operating income; or
   e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
    a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;
       i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
       ii. To a borrower, concerning the location or identity of potential investors or lenders; or
    b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
    c. Processing a loan; but
    d. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:
       i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
       ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
       iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
       iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modifica-

tion, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.

12. "Electronic record" has the meaning stated at A.R.S. § 44-7002(7).
13. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
    a. The person is entitled to payment, or is paid, by the licensee;
    b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
    c. The licensee has the right to hire and fire the employee and the employee's assistants;
    d. The licensee directs the methods and procedures for performing the employee's job;
    e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
    f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
14. "Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
15. "Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
16. "Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
17. "Holds out to the public," as used in this Section's definition of "branch office," means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Holds out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Holds out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.
18. "Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
19. "Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.
20. "Person" means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
21. "Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
22. "Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
    a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
    b. Obtains a completed Employment Eligibility Verification (Form I-9);
    c. Obtains a completed and signed employment application;
    d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
    e. Consults with the applicant's most recent or next most recent employer, if any;
    f. Inquiries regarding the applicant's qualifications and competence for the position;
    g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
    h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
23. "Record" has the meaning stated at A.R.S. § 44-7002(13).
24. "Registered to do business in this state" means:
    a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
    b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
    c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
    d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
    e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:

        All the current amendments, or

A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;

f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;

g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;

h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or

i. The entity is exempt from registration.

25. "Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.

26. "Resident of this state" means a natural person domiciled in Arizona.

27. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:

a. Lives in Arizona during the entire period of designation as the responsible individual on a license;

b. Is in active management of a licensee's affairs;

c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and

d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

Historical Note

Former Rule 2. Former R4-4-102 repealed, new R4-4-102 adopted effective August 16, 1991 (Supp. 91-3). R20-4-102 recodified from R4-4-102 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 668, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-103. Fingerprints

A. A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.

B. A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.

C. A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:

1. A municipal police department,
2. A local sheriff's office, or
3. Another law enforcement authority recognized by the Superintendent.

Historical Note

Former Rule 3. Former R4-4-103 repealed, new R4-4-103 adopted effective August 16, 1991 (Supp. 91-3). R20-4-103 recodified from R4-4-103 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department of Financial Institutions form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require additional information necessary to complete an application or other form.

Historical Note

Former Rule 4. Former R4-4-104 repealed, new R4-4-104 adopted effective August 16, 1991 (Supp. 91-3). R20-4-104 recodified from R4-4-104 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-105. Claims Against a Deposit in Place of Bond

A. As used in this Section:

1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place of a bond.
2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the Superintendent.
3. "Verified claim" means a claim filed with the Superintendent under subsection (B).
4. "Award" means an amount of money granted under subsection (F).

B. A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:

1. Against a depositor;
2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
3. Documented by:
   a. A certified copy of the complaint in the action;
   b. A certified copy of the judgment in the action;
   c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
   d. A statement of any amounts recovered on the judgment; and
   e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.

C. A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.

D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.

E. The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:
1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
3. The judgment's execution has been stayed for any reason;
4. The judgment was procured through fraud or collusion;
5. The judgment has been satisfied from other sources; or
6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.

F. If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:
1. Attorney's fees, and
2. Amounts previously paid on the judgment.

G. A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.

H. If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).

I. If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
   a. Each granted claim shall receive a pro rata share of the total deposit.
   b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
      i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
      ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
   c. The Superintendent shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.

J. A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.

K. The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certified copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). R20-4-105 recodified from R4-4-105 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Superintendent if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the Superintendent a copy of the:
1. Petition for relief,
2. Schedule of assets and liabilities,
3. Statement of financial affairs,
4. List of creditors, and
5. Plan of reorganization.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). R20-4-106 recodified from R4-4-106 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-107. Licensing Time-frames

A. As used in this Section, "application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.

B. The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
1. Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.
2. An applicant whose application is incomplete shall supply the missing information within 60 days after the date

of the notice. If an applicant shows good cause in writing before the expiration of the 60 day time limit, the Superintendent shall extend the period for administrative completion of an application. The administrative completeness review time-frame stops running on the postmark date of the Department's written notice of an incomplete application, and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department shall reject the application and close the file. An applicant may reapply.

3. The substantive review time-frame begins to run on the postmark date of the Department's written notice that the application is administratively complete.
4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal in the form required by A.R.S. § 41-1076.
5. The Department shall calculate time limits prescribed in this Section under R2-19-107.

C. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	30	30	60
8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			

	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	30	15	45
17	Motor Vehicle Dealer	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
18	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
19	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	Loan Originators	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

Historical Note
Table A adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation
A licensee shall deliver to the Director a copy of each amendment to the licensee's articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Director, an officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Former Rule 1. R20-4-201 recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-202. Bylaws
A licensee shall deliver to the Director a copy of each amendment to the licensee's bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Former Rule 2. R20-4-202 recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-203. Repealed

Historical Note
Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-204. Repealed

Historical Note
Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-205. Repealed

Historical Note
Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-206. Bankers Blanket Bond Coverage - A.R.S. § 6-188
A. Each bank shall carry at least the following basic blanket bond coverage listed in Table B.
B. Each bank shall supplement the bankers blanket bond coverage with at least a $2,000,000 excess fidelity bond.

Historical Note
Former Rule 6. R20-4-206 recodified from R4-4-206 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

Table B. Basic Blanket Bond Coverage

Banks with Deposits of:			**Amounts:**
Less than $25,000,000			$300,000
25,000,000	to	35,000,000	350,000

35,000,000	to	50,000,000	450,000
50,000,000	to	75,000,000	550,000
75,000,000	to	100,000,000	700,000
100,000,000	to	150,000,000	850,000
150,000,000	to	250,000,000	1,200,000
250,000,000	to	500,000,000	1,700,000
500,000,000	to	1,000,000,000	2,500,000
1,000,000,000	to	2,000,000,000	4,000,000
2,000,000,000	to	5,000,000,000	6,000,000
5,000,000,000	to	20,000,000,000	9,000,000
Over 20,000,000,000			10,000,000

Historical Note

Table B removed from R20-4-206(A) to conform with the codification scheme of this Chapter and amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-207. Capital Obligations

A. An applicant for a Director's order of approval to issue a capital obligation shall submit the following documents to the Director and shall not issue any capital obligation before the Director issues the order of approval. The required documents are:

1. A certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation;
2. A copy of the agreement underlying the capital obligation;
3. A copy of the note or debenture intended to represent the capital obligation; and
4. A copy of the prospectus, if any, proposed for use in the sale of the capital obligation.

B. Each document evidencing a capital obligation shall:

1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.
2. Have a maturity provision that either:
   a. Gives the obligation a maturity of at least five years, or
   b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least five years. The restriction on maturity stated in this subsection does not apply to any obligation that otherwise meets all the requirements of this Section if the Director determines that exigent circumstances require the issuance of the obligation without regard to any restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.
3. State expressly on its face that the obligation:
   a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and
   b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.
4. Be unsecured.
5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Director's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.
6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.
7. State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation.

C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Director. The Director may grant that authority in the initial order of approval or in a later order of approval.

Historical Note

Former Rule 7. R20-4-207 recodified from R4-4-207 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 2155, effective May 4, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-208. Repealed

Historical Note

Former Rule 8. R20-4-208 recodified from R4-4-208 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-209. Notice of Permanent Closing of Banking Office

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Director specifying the banking office it plans to close and the closing date. The bank shall ensure that the Director receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.

Historical Note

Former Rule 9. R20-4-209 recodified from R4-4-209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5388, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-210. Repealed

Historical Note

Former Rule 10. R20-4-210 recodified from R4-4-210 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-211. Application for a Banking Permit

A. Before an application is filed, the representatives of the potential applicant shall meet with the Director to discuss capitalization, location, and management of the proposed bank.

B. After the meeting required by subsection (A), persons who wish to proceed with the application process shall submit an application in the form the Director prescribes. The applicant shall support the application with sufficient information to enable the Director to make a determination.

Historical Note

Former Rule 11. R20-4-211 recodified from R4-4-211 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-212. Repealed

Historical Note
Former Rule 12. Amended effective September 4, 1981 (Supp. 81-4). R20-4-212 recodified from R4-4-212 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-213. Repealed

Historical Note
Former Rule 13. Repealed effective September 13, 1981 (Supp. 81-5). R20-4-213 recodified from R4-4-213 (Supp. 95-1).

R20-4-214. Preservation of Records

A. Every bank shall keep its corporate and business records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. Copies complying with this subsection, when satisfactorily identified, have the same evidentiary status as an original. A bank may keep its records as electronic records if the bank can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. A bank shall keep its corporate and business records for the period required by this Section. These periods are measured from the date of the last entry or final action date. A bank shall have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).

C. Beginning on the effective date of this Section, corporate and business records of a bank operating in the state of Arizona are classified, and their retention periods are prescribed, according to the schedule in subsection (D). Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in subsections (C)(1) through (20).

1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.
2. "AC" means after closure.
3. "ACH" means automated clearing house.
4. "AE" means after expiration.
5. "ALC" means after last contact.
6. "AP" means after paid.
7. "ATD" means after termination date.
8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.
9. "FDIC" means the Federal Deposit Insurance Corporation.
10. "FHA" means the Federal Housing Administration.
11. "FHLMC" means the Federal Home Loan Mortgage Corporation.
12. "FNMA" means the Federal National Mortgage Association.
13. "GNMA" means the Government National Mortgage Association.
14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.
15. "M" means months.
16. "P" means the bank shall keep the record permanently.
17. "PMI" means private mortgage insurance.
18. "SAR" means a suspicious activity report required by the Federal Bank Secrecy Act.
19. "TTL" means a treasury, tax, and loan account maintained by a bank.
20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.

D. Retention Schedule

1. Accounting and Auditing

a.	Accrual and bond amortization	3
b.	Audit report	6
c.	Audit work papers	3
d.	Bank call, income and dividend report	5
e.	Bill, statement, or invoice – paid	7
f.	Budget work papers	2
g.	Collateral vault "in-and-out" ticket	1
h.	Daily reserve computation	1
i.	Earnings report	7
j.	Expense voucher or invoice	7
k.	Financial statement	7
l.	Interoffice reconciliation	1
m.	Interoffice transaction	1
n.	Periodic statement for account owned by bank	2
o.	Reconcilement of deposits – due to bank	2
p.	Reconcilement register – due from bank	2
q.	Return and cash item register	1
r.	Service contract	2
s.	Treasury tax and loan account	2
t.	Unclaimed property record	5

2. Administration

a.	Articles of incorporation or association, bylaws or other record of organization	P
b.	Bankers blanket bond-record showing compliance	5AE
c.	Bank examiner's report	7
d.	Capital note issuance and transfer record	P
e.	Depreciation record – office equipment	3
f.	Dividend check and register	7
g.	Dividend check – outstanding	P
h.	Expired policy insuring the bank	3 AE
i.	FDIC assessment base, record	5
j.	FDIC certificate	P
k.	Insurance policy number, record of premium paid and amount recovered	3 AE
l.	Legal proceedings when completed	5
m.	Minute book of:	
	i. Meetings of the board of directors	P
	ii. Meeting of committees of the board of directors	P
	iii. Shareholders' meetings	P
n.	Postage meter record book (from date of final entry)	1
o.	Real estate documentation	5 ATD
p.	Report to directors	3
q.	Stock issuance and transfer record	P
r.	Required report to supervisory agency	3
s.	Tax controversy or proceeding when completed	7
t.	Tax record not material to any controversy	7
u.	Voting list and proxies	3

3. Collections

a.	Collection payment record	1
b.	Collection receipt – carbon	1
c.	Collection register	1
d.	Coupon cash letter – outgoing	1
e.	Coupon envelope	1
f.	Customer file copy	1
g.	Incoming collection letter	1
h.	Incoming contract or note letter	1

4. Customer service
   - a. Broker account holder – identification 5
   - b. Broker's confirmation 3
   - c. Broker's invoice 3
   - d. Broker's statement 3
   - e. E-Bond application 2
   - f. E-Bond sold or redeemed – record 2
   - g. E-Bond transmittal letter 2
   - h. Lock box daily receipts 1
   - i. Night depository agreement 1 AC
   - j. Night depository daily record 1
   - k. Safekeeping record and receipt 5
   - l. Securities buy order and sell order 3
5. Data processing (management information systems)
   - a. Back-up data (for reconstruction) daily, end of month, quarter, or year 1
   - b. Disaster recovery program P
   - c. Film copy of every IRS financial reporting form 6
   - d. Program change P
   - e. System, program and procedure manual P
6. Deposits
   - a. Account opened and account closed 1
   - b. Certificate of deposit purchase record 7
   - c. Check paid, withdrawal slip, and other debits to account 7
   - d. Club account check register 1
   - e. Club account coupon 1
   - f. SAR – for suspicious transaction under $10,000 5
   - g. CTR – for transaction exceeding $10,000 5
   - h. Customer authorization, resolution, and signature card 6 AC
   - i. Deposit account record needed to reconstruct 7
   - j. Deposit and other credits 7
   - k. Dormant account – after closed or escheated 7 ALC
   - l. Form 1096 and 1099 reports to IRS 7
   - m. Individual retirement account record 7
   - n. Interest check or other record of interest payment and reports 7
   - o. Internal management reports:
     - i. Large balance 1
     - ii. Overdraft 1
     - iii. Public funds 1
     - iv. Service charges 1
     - v. Stop payment 1
     - vi. Uncollected funds 1
     - vii. Unposted item 1
     - viii. Zero balance 1
   - p. Ledger card 5 AC
   - q. Power of attorney document 7 ATD
   - r. Receipt for statement held at customer's request 1
   - s. Record showing compliance with the following federal regulations. The state retention period applies unless, and until, it is preempted by federal law:
     - i. Regulation CC, Expedited Funds Availability Act 2
     - ii. Regulation DD, Truth in Savings Act 2
     - iii. Regulation E, Electronic Funds Transfer Act 2
   - t. Returned statement and canceled checks 6
   - u. Statement 6
   - v. Stop payment order 6 AE
   - w. Document used to request and receive Tax Identification Number 6
   - x. Transaction journal 6
   - y. Trial balance 6
7. Due from banks
   - a. Advice from correspondent bank 1
   - b. Bank statement 1
   - c. Draft – original 7
   - d. Draft register or copy 1 AP
   - e. Duplicate check – information and documentation pertaining to issuance 7
   - f. Reconcilement register 1
8. Due to banks
   - a. Account opened and account closed – reports 1
   - b. Advice – copy 1
   - c. Incoming cash letter memo for credit 1
   - d. Incoming cash letter for remittance 1
   - e. Reconcilement register (TTL) 2
   - f. Reconcilement verification 1
   - g. Resolution 2 AC
   - h. Signature card 6 AC
   - i. Trial balance (fiche) 7
   - j. Undelivered statement, reconstruction available from bank records 1
   - k. Undelivered statement, reconstruction not possible 7
9. General
   - a. Address change order 1
   - b. Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check 1
   - c. Writ of attachment or garnishment 5
   - d. Attachment, release 5
   - e. Armored car receipt 1
   - f. Check book order 1
   - g. Check book – receipt 1
   - h. Court order memorandum record 5
   - i. Notice of Protest 1
   - j. Vault record – opening and closing 1
   - k. Wire transfer debit entry and credit entry 7
10. General ledger
    - a. Daily statement of condition 3
    - b. General journal – if byproduct of posting the general ledger 3
    - c. General journal – if used as book of original entry with description 3
    - d. General ledger 5
    - e. General ledger ticket – debit and credit 2
11. International department
    - a. Broker account holder – identification 5
    - b. Cable copy 7
    - c. Cable requisition 7
    - d. Collection paid 1
    - e. Correspondence 2
    - f. Draft 7
    - g. Foreign collection register 6
    - h. Foreign draft application 6
    - i. Foreign draft – carbon 2 ATD
    - j. Foreign exchange remittance sheet or book 6
    - k. Foreign financial account – record 7
    - l. Foreign mail transfer application 6
    - m. Foreign mail transfer – carbon 2 ATD
    - n. Foreign outstanding cash 2
    - o. Foreign payment – incoming 2
    - p. Letter of credit application 2
    - q. Letter of credit ledger sheet 7
    - r. Transfer outside of the United States in excess of $10,000 – record 5
12. Investments
    - a. Bonds
      - i. Amortization record 6
      - ii. Confirmation 3
      - iii. Safekeeping receipt 2
    - b. Broker's securities
      - i. Broker's invoice 3
      - ii. Broker's statement 3
      - iii. Report of lost or stolen securities 3
      - iv. Safekeeping advice 2
      - v. Taxpayer identification number 5

c. Commercial paper
  i. Broker's advice 2
  ii. Purchase order 2
  iii. Remittance advice 2
d. Mortgage-backed securities
  i. Buy-and-sell agreement 3
  ii. Commitment letter 7
  iii. FHLMC and FNMA loan file 7
  iv. GNMA certificate 7
  v. Interest accrual record 7
  vi. Monthly remittance report 7

13. Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection. This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required by this subsection.
  a. All loans – general
    i. Application for loan approval 6
    ii. Appraisal 6
    iii. Borrower's financial statement 6
    iv. Charge-off record 10
    v. Charged off note 10
    vi. Collateral file 6
    vii. Correspondence 6
    viii. Credit file- all documentation 6
    ix. Credit report 6
    x. Daily proof and record 6
    xi. Loan committee minutes P
    xii. Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry 6
    xiii. Other documentation for reconstruction of loan 2
  b. Commercial loans
    i. Application for loan denied 12 M
    ii. Bill of sale 6
    iii. Borrowing resolution 3
    iv. Business annual report (fiscal or year end) – after date of report 3
    v. Business cash-flow analysis report – after date of report 3
    vi. Business tax return – after date of return 6
    vii. Commitment letter 6
    viii. Copy of mortgage note or deed of trust 6
    ix. Evidence of insurance 6
    x. Guaranty 6
    xi. Letter of credit 6
    xii. Participation agreement 6
    xiii. Promissory note 6
    xiv. Purchase and sale agreement 6
    xv. Security agreement 6
    xvi. Title documentation 6
    xvii. UCC filing 6
  c. Consumer loans
    i. Application for loan denied, including adverse action notice 25 M
    ii. Collateral record 6
    iii. Hazard insurance record 6
    iv. Invoice 6
    v. Life and disability insurance record 6
    vi. Overdraft loan agreement 6
    vii. Promissory note and modification agreement – copy 6
    viii. Title documentation 6
    ix. UCC filing – copy 6
  d. Real estate loans
    i. Assignment of escrow 6
    ii. Assumption 6
    iii. Commitment letter 6
    iv. Copy of deed of trust or mortgage note, as it may have been modified 6
    v. Escrow analysis record 6
    vi. Evidence of any FHA or PMI insurance required 6
    vii. Hazard insurance life of loan
    viii. Proof of insurance excluding hazard 6
    ix. Sales contract 6
    x. Settlement sheet 6
    xi. Survey 6
    xii. Title documentation 6
  e. Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:
    i. Certificate of occupancy 6
    ii. Construction progress report 6
    iii. Contractor's cost breakdown 6
    iv. Disbursement documentation 6
    v. Inspection report 6
    vi. Residential construction specifications and material list 6

14. Official checks and drafts
  a. Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft 7
  b. Bank draft 3
  c. Cashier's check – canceled 7
  d. Cashier's check register – copy 7
  e. Expense check – canceled 7
  f. Expense check register – copy 7
  g. Expense voucher or invoice 7
  h. Money order – bank or personal 7
  i. Money order register – copy 7
  j. Official check outstanding P

15. Personnel Records
  a. Attendance record, and time card 3
  b. Authorization for payroll deduction 2
  c. Department of labor report 5
  d. Disability record 5
  e. Employee record and personnel folder 5
  f. Employment application 3 AT
  g. Insurance record 2
  h. Payroll check 2
  i. Pension fund record 10
  j. Profit sharing fund record 10
  k. Rejected employee application 2
  l. Salary ledger or electronic data processing printout 4
  m. Salary receipt 2
  n. W-3 reconciliation of income tax withheld from wages 3
  o. W-4 withholding exemption certificate 3
  p. Wage and tax statement record (W-2) 7
  q. Wage differential documentation (Fair Labor Standards Act) 3

16. Registered mail
  a. Marine insurance book 3
  b. Record of incoming and outgoing registered mail 1
  c. Return receipt card 3

17. Safe deposit vault
    a. Access ticket or card 6
    b. Court order and correspondence 6
    c. Delivery of will, burial plot deed, insurance policy – receipt 6
    d. Forced entry record 6
    e. Lease or contract – closed account 2 AC
    f. Ledger record of account 1
    g. Opened box contents – record and report 7
    h. Rent receipt – copy 1
    i. Sale to satisfy lien – record 7
    j. Signature card, authorization, and resolution 6 AC
18. Tellers
    a. Mail teller envelope 3 M
    b. Teller's balancing recap or recap book 1
    c. Teller's cash ticket – original and carbons 1
    d. Teller's cash shipment record 1
    e. Teller's exchange ticket 1
    f. Teller's machine tape 1
19. Transit, proof, and clearing
    a. ACH entry 6
    b. Advice of correction to deposit 2
    c. Clearinghouse settlement sheet – recapitulation of checks delivered to the clearinghouse or federal reserve 2
    d. Record of items processed 6
    e. Proof machine tape or other record 2
    f. Receipt for transit letter 1
    g. Return item letter 5
20. Trust department administration
    a. Appraisal of real or personal property held as a trust asset 3 AC
    b. Correspondence 3 AC
    c. Decree or receipt and release 3 AC
    d. Fee record and supporting data 3 AC
    e. Intermediate and final account 3 AC
    f. Legal documentation including judgment, court order, and legal opinion 3 AC
    g. Paid bill 3 AP
    h. Real estate insurance policy 1 AE
    i. Real estate and mortgage document 3 AC
    j. Receipt for asset received or delivered 3 AC
    k. Record of asset tax cost 3 AC
    l. Summary card, original instrument, agreement and amendment, and letters of appointment 3 AC
    m. Synopsis sheet 3 AC
21. Corporate trust
    a. Bond registration journal 3 AC
    b. Bond – canceled 7
    c. Indemnity bond P
    d. Certification 2
    e. Coupon envelope 6 M
    f. Coupon – canceled 6 M
    g. Customer receipt 7
    h. Dividend and coupon record 3 AC
    i. Dividend and interest disbursement check and list 3 AC
    j. General ledger ticket 2
    k. Legal paper P
    l. Copy of canceled stock certificate, original returned to customer 1
    m. Stock registration journal 3 AC
    n. Stock transfer memo 1
    o. Stock transfer receipt 1
    p. Tax return 3 AC
    q. Transfer – supporting papers 3 AC
    r. Transfer journal 3 AC
    s. Transfer tax waiver 3 AC
    t. Trust ledger – corporate 7
22. Personal trust
    a. Record of previously discharged fiduciary
        i. Accounting 3 AC
        ii. Decree 3 AC
        iii. Receipt and release 3 AC
    b. Accounting – recorded 3 AC
    c. Advice of payment – securities department regarding bond and coupon collection 3 AC
    d. Appraisal
        i. Real property 3 AC
        ii. Personal property 3 AC
    e. Asset delivery receipt 3 AC
    f. Authorization
        i. By co-fiduciary P
        ii. By consultant P
    g. Approval 5
        i. By co-fiduciary P
        ii. By consultant P
    h. Broker's statement 7
    i. Buy and sell order 7
    j. Cash documentation
        i. Customer cash and asset statement 7
        ii. Cash and security journal 7
        iii. Cash trial balance 1
    k. Common trust fund annual report 10
    l. Correspondence
        i. Transfer letter 3 AC
        ii. Claim letter 3 AC
    m. Coupon collection letter 7
    n. Court accounting and petition 7
    o. Daily transaction journal 6 M
    p. Debits and credits – daily 1
    q. Documentation necessary to support account decision 3 AC
    r. Tax Documentation
        i. Federal estate tax return 10
        ii. State estate tax return 10
        iii. Tax-related work papers 10
        iv. Federal gift tax return 10
    s. Fee calculations and supporting data 1
    t. Income tax return
        i. Federal 3 AC
        ii. State 3 AC
    u. Inventory 3 AC
    v. Investment review and related material 3 AC
    w. Minutes
        i. Investment committee P
        ii. Trust committee P
23. Other personal trust records
    a. Legal opinion 3 AC
    b. Correspondence related to legal opinion 3 AC
    c. Paid bill 7
    d. Review and recommendation 3 AC
    e. Safekeeping record and receipt 3 AC
    f. Security ledger sheet P
    g. Trust check 10
    h. Trust entry – original 3 AC
    i. Trust or agency agreement – original 3 AC
    j. Vault withdrawal and deposit ticket 7
    k. Will – certified copy P
    l. Work papers supporting tax return 7
24. Trust Investments
    a. Annual report
        i. Common trust fund 10
        ii. Pooled fund 10
    b. Valuation
        i. Common trust fund 10
        ii. Pooled fund 10
    c. Minutes
        i. Investment committee P
        ii. Administrative committee P
    d. Investment order and broker's confirmation 3 AC
    e. Investment review and related material 3 AC

f.	Correspondence	3 AC
g.	Summary of annual account activity	3 AC
25.	Wire transfer	
a.	Incoming wire log	1
b.	Outgoing wire log	1
c.	Transmission record	7
d.	Wire transfer request	7

Historical Note
Former Rule 14. R20-4-214 recodified from R4-4-214 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4142, effective September 12, 2001 (Supp. 01-3). Missing notation in subsection (D)(1)(j) corrected as proposed at 7 A.A.R. 2491 (Supp. 20-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-215. Trust Business
Each bank authorized to conduct trust business under their banking permit shall comply with the applicable requirements of R20-4-808 through R20-4-816.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-215 recodified from R4-4-215 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

ARTICLE 3. EXPIRED

R20-4-301. Expired

Historical Note
Former Rule 1. R20-4-301 recodified from R4-4-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-302. Repealed

Historical Note
Former Rule 2; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-302 recodified from R4-4-302 (Supp. 95-1).

R20-4-303. Expired

Historical Note
Former Rule 3. R20-4-303 recodified from R4-4-303 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-304. Expired

Historical Note
Former Rule 4. R20-4-304 recodified from R4-4-304 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-305. Repealed

Historical Note
Former Rule 5. R20-4-305 recodified from R4-4-305 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-306. Repealed

Historical Note
Former Rule 6. R20-4-306 recodified from R4-4-306 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-307. Repealed

Historical Note
Former Rule 7. R20-4-307 recodified from R4-4-307 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-308. Repealed

Historical Note
Former Rule 8. R20-4-308 recodified from R4-4-308 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-309. Expired

Historical Note
Former Rule 9. R20-4-309 recodified from R4-4-309 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-310. Reserved

R20-4-311. Repealed

Historical Note
Former Rule 11; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-311 recodified from R4-4-311 (Supp. 95-1).

R20-4-312. Repealed

Historical Note
Former Rule 12. R20-4-312 recodified from R4-4-312 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-313. Reserved

R20-4-314. Repealed

Historical Note
Former Rule 14. R20-4-314 recodified from R4-4-314 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-315. Repealed

Historical Note
Former Rule 15. R20-4-315 recodified from R4-4-315 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-316. Repealed

Historical Note
Former Rule 16. R20-4-316 recodified from R4-4-316 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-317. Repealed

Historical Note
Former Rule 17; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-317 recodified from R4-4-317 (Supp. 95-1).

R20-4-318. Expired

Historical Note
Former Rule 18. R20-4-318 recodified from R4-4-318 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J)

at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-319. Repealed

Historical Note
Former Rule 19. R20-4-319 recodified from R4-4-319 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-320. Repealed

Historical Note
Former Rule 20. R20-4-320 recodified from R4-4-320 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-321. Repealed

Historical Note
Former Rule 21. R20-4-321 recodified from R4-4-321 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-322. Repealed

Historical Note
Former Rule 22; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-322 recodified from R4-4-322 (Supp. 95-1).

R20-4-323. Repealed

Historical Note
Former Rule 23. R20-4-323 recodified from R4-4-323 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-324. Expired

Historical Note
Former Rule 24. R20-4-324 recodified from R4-4-324 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-325. Expired

Historical Note
Former Rule 25. R20-4-325 recodified from R4-4-325 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-326. Expired

Historical Note
Former Rule 26. R20-4-326 recodified from R4-4-326 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-327. Expired

Historical Note
Former Rule 27. R20-4-327 recodified from R4-4-327 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-328. Expired

Historical Note
Former Rule 28. R20-4-328 recodified from R4-4-328 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-329. Repealed

Historical Note
Former Rule 29. R20-4-329 recodified from R4-4-329 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-330. Expired

Historical Note
Original Rule. R20-4-330 recodified from R4-4-330 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-331. Repealed

Historical Note
Original Rule. R20-4-331 recodified from R4-4-331 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

ARTICLE 4. CREDIT UNIONS

R20-4-401. Fidelity Bond Coverage

A. A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.

B. A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.

C. A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Director to transact surety business in Arizona.

Historical Note
Former Rule 1. R20-4-401 recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-402. Repealed

Historical Note
Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 5. CONSUMER LENDERS

R20-4-501. Repealed

Historical Note
Former Rule 1. R20-4-501 recodified from R4-4-501 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-502. Repealed

Historical Note
Former Rule 2. R20-4-502 recodified from R4-4-502 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-503. Adjustments in Precomputed Charges

A licensee shall adjust the total precomputed charges if the first installment period is more or less than one month in duration. The licensee's records shall reflect the adjustment's collection in one of three ways.

1. In the first installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

Historical Note
Former Rule 3. R20-4-503 recodified from R4-4-503 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-504. Repealed

Historical Note
Former Rule 4. R20-4-504 recodified from R4-4-504 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-505. Repealed

Historical Note
Former Rule 5. R20-4-505 recodified from R4-4-505 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-506. Repealed

Historical Note
Former Rule 6. R20-4-506 recodified from R4-4-506 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-507. Repealed

Historical Note
Former Rule 7. R20-4-507 recodified from R4-4-507 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full
If a borrower repays a loan before the due date of the final installment, the licensee shall calculate any refund or credit due on the precomputed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

Historical Note
Former Rule 8. R20-4-508 recodified from R4-4-508 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-509. Repealed

Historical Note
Former Rule 9. R20-4-509 recodified from R4-4-509 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-510. Repealed

Historical Note
Former Rule 10. R20-4-510 recodified from R4-4-510 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-511. Repealed

Historical Note
Former Rule 11. R20-4-511 recodified from R4-4-511 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-512. Reserved

R20-4-513. Repealed

Historical Note
Former Rule 13. R20-4-513 recodified from R4-4-513 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-514. Repealed

Historical Note
Former Rule 14. R20-4-514 recodified from R4-4-514 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-515. Repealed

Historical Note
Former Rule 15. R20-4-515 recodified from R4-4-515 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-516. Repealed

Historical Note
Former Rule 16. R20-4-516 recodified from R4-4-516 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-517. Repealed

Historical Note
Former Rule 17. R20-4-517 recodified from R4-4-517 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-518. Deferral Fee

A. A licensee may collect a deferral fee at the time it agrees to a deferment or at any time after the assessment of a deferral fee. If a licensee receives a payment after it agrees to a deferment, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.

B. If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment first to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

Historical Note
Former Rule 18. R20-4-518 recodified from R4-4-518 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-519. Deferment Statement
A licensee shall give the borrower a statement at the time it agrees to a deferment and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

Historical Note

Former Rule 19. R20-4-519 recodified from R4-4-519 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-520. Repealed

Historical Note

Former Rule 20. R20-4-520 recodified from R4-4-520 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-521. Repealed

Historical Note

Former Rule 21. R20-4-521 recodified from R4-4-521 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-522. Repealed

Historical Note

Former Rule 22. R20-4-522 recodified from R4-4-522 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-523. Repealed

Historical Note

Former Rule 23. R20-4-523 recodified from R4-4-523 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-524. Books, Accounts, and Records

A. A licensee may keep its books, accounts, and records as electronic records if the licensee can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. A licensee authorized under A.R.S. Title 6, Chapter 5 shall:

1. Keep its books, accounts, and records of operations separate from the books, accounts, and records of its other business activities; and
2. In addition to any statutory requirements, the books, accounts, and records of operations shall include the following:
   a. A file containing a record of all legal actions brought during the fiscal year which the licensee shall keep until the Department conducts its examination of the licensee;
   b. An itemized record of disbursement of the proceeds of each loan which shall also include, if the licensee makes precomputed loans, the amount of refund on each loan that is renewed or refinanced;
   c. A record of the receipt of all allowable fees;
   d. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan; and
   e. A record of the borrower's voluntary election to purchase any insurance in connection with a loan if that insurance is sold by the licensee.

Historical Note

Former Rule 24. R20-4-524 recodified from R4-4-524 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-525. Repealed

Historical Note

Former Rule 25. R20-4-525 recodified from R4-4-525 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-526. Repealed

Historical Note

Former Rule 26. R20-4-526 recodified from R4-4-526 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-527. Repealed

Historical Note

Former Rule 27. R20-4-527 recodified from R4-4-527 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-528. Repealed

Historical Note

Former Rule 28. R20-4-528 recodified from R4-4-528 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-529. Repealed

Historical Note

Former Rule 29. R20-4-529 recodified from R4-4-529 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-530. Repealed

Historical Note

Former Rule 30. R20-4-530 recodified from R4-4-530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-531. Repealed

Historical Note

Former Rule 31. R20-4-531 recodified from R4-4-531 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-532. Repealed

Historical Note

Former Rule 32. R20-4-532 recodified from R4-4-532 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-533. Reserved

R20-4-534. Insurance

A. A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read substantially as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE INSURANCE IN THE AMOUNT OF $ _____.

I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF $ _____.

B. A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read substantially as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF
$ _____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF $ _____.
I ATTEST THAT THE VALUE OF MY PROPERTY INSURED IN CONNECTION WITH THIS LOAN IS THE SUM OF
$ _____.

Historical Note
Former Rule 34. R20-4-534 recodified from R4-4-534 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-535. Reserved

R20-4-536. Repealed

Historical Note
Former Rule 36. R20-4-536 recodified from R4-4-536 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6 consisting of Section R4-4-601 repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

R20-4-601. Repealed

Historical Note
Former Rule 1; Former Section R4-4-601 repealed, new Section R4-4-601 adopted effective October 26, 1978 (Supp. 78-5). R20-4-601 recodified from R4-4-601 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-602. Applications

A. An applicant for a debt management company license shall send the Department an application on the form required by the Director. If the Director determines that a credit report is required as authorized under A.R.S. § 6-704(A), the applicant shall order a credit report from a credit reporting agency disclosing the credit history of the applicant's principals or managing agents and submit the credit report to the Department. A complete application shall include the credit report required by this Section and all of the following:

1. The surety bond required by A.R.S. § 6-704(B);
2. Fidelity bonds if required by the Director under A.R.S. § 6-704(D);
3. The nonrefundable application fee specified in A.R.S. § 6-126(A)(14);
4. An original license fee described in A.R.S. §§ 6-126(B), 6-126(D)(2), and 6-706;
5. A sample of the contract intended to be used by the applicant required by A.R.S. § 6-704(E):
6. Current financial statements as described in R20-4-604(A)(5);
7. A copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity;
8. The name and address information required under A.R.S. § 6-704(A); and
9. A background check, on the form required by the Department, for each of the applicant's principals, principal officers, trustees, partners, and managing agents.

B. A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Director.

C. A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Director. A debt management company shall apply separately to renew each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(D)(2).

D. The Department may require additional information the Director considers necessary in connection with an application under this Section.

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-602 recodified from R4-4-602 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-603. Reports

A. Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Director. A debt management company shall deliver its report to the Department on or before August 15.

B. Each debt management company shall notify the Department of any change in its ownership or in the names of its officers, directors, trustees, partners, or managing agents within 30 days of the change.

Historical Note
Adopted effective January 1, 1979 (Supp. 78-5). R20-4-603 recodified from R4-4-603 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-604. Records

A. A debt management company shall keep books, accounts, and records adequate to provide a clear and readily understandable

record of all its business activity. A debt management company may keep its books, accounts, and records as electronic records if the debt management company can generate all information and documentation required by this Section in the timeframe set by the Department for examination or other purposes. A debt management company's books, accounts, and records shall include:

1. A file for each account containing:
   a. A copy of all correspondence concerning the account;
   b. Evidence of the notice given to creditors of the debt management contract;
   c. A subsidiary ledger disclosing all financial transactions concerning the account;
   d. A copy of each written statement of account given to the debtor;
   e. The original budget analysis required under R20-4-607; and
   f. The original contract between the debt management company and the debtor, including all amendments.
2. A trust account general ledger, which is kept current daily, which reflects each deposit to and disbursement from the trust account.
3. Each reconciliation of the debt management company's trust account, prepared at least once a month.
4. A general ledger, kept current monthly, which reflects each financial transaction by the debt management company except those recorded in its trust account general ledger.
5. A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently if directed by the Director, which reflects the financial condition of the debt management company. The financial statement shall include:
   a. A balance sheet,
   b. A statement of income and retained earnings,
   c. A statement of changes in financial condition, and
   d. Appropriate footnotes that either:
      i. Explain entries in the documents listed in subsections (A)(5)(a), (b), and (c);
      ii. Contain material information not required or not reportable in documents listed in subsections (A)(5)(a), (b), or (c); or
      iii. Contain other disclosures required by generally accepted accounting principles.
6. A record of all litigation naming the debt management company as a party including:
   a. For pending litigation:
      i. A copy of the complaint;
      ii. A copy of any answer filed by the debt management company in response to the complaint; and
      iii. A copy of any motion filed by the debt management company; and
   b. For any litigation that is no longer pending, a copy of any judgment showing the settlement date, dismissal, or other final order disposing of the litigation.

B. All records required under this Section may be maintained at the debt management company's office in Arizona. A debt management company may keep its records outside this state if it:

1. Makes the records available to the Director, for examination or other purposes, in this state not more than three business days after demand; and
2. Allows its debtor customers to call toll free to obtain information from the records that are not available from the debt management company's office in Arizona.

C. Each debt management company shall preserve its books, accounts, and records for the period required by A.R.S. §§ 6-709(J) and 6-710(1).

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-604 recodified from R4-4-604 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-605. Reserved

R20-4-606. Reserved

R20-4-607. Budget Analysis

A. A debt management company shall not accept an account unless it first concludes that the debtor can reasonably meet the payments agreed upon by the debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.

B. The written budget analysis shall either be part of an application form or a separate document. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.

C. The budget analysis shall disclose the disposable income available for payment to the debt management company after the debtor pays their reasonable and necessary living expenses including taxes, insurance, child support, alimony, and residential rent or mortgage payments.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-607 recodified from R4-4-607 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-608. Reserved

R20-4-609. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-609 recodified from R4-4-609 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-610. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-610 recodified from R4-4-610 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-611. Advertising

A. A debt management company shall not use advertising, communication, or sales material that contains:

1. A false, misleading, or deceptive statement about the debt management company's services or charges. A statement is a violation of this Section if the person making the

statement does not state a material fact necessary to make the statement true, in light of the circumstances under which it is made;
2. A claim, direct or implied, that the debt management company consolidates debts or makes loans; or
3. A schedule of payments in any form.

B. A debt management company's advertising, communication, and sales material shall contain the following legend, conspicuously displayed in at least 12 point type and in bold print:
"NOT A LOAN COMPANY."

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-611 recodified from R4-4-611 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-612. Solvency and Minimum Liquid Assets

A. A debt management company shall not operate if it is insolvent. For purposes of this Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).

B. To determine compliance with A.R.S. § 6-709(A), a debt management company's liquid assets include funds held in its trust account. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by $2,500.00 the total of all its current business liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.

C. Except as otherwise provided by this Section, or in a specific ruling by the Director, a debt management company shall use generally accepted accounting principles to compute assets and liabilities.

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-612 recodified from R4-4-612 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-613. Reserved

R20-4-614. Reserved

R20-4-615. Reserved

R20-4-616. Reserved

R20-4-617. Reserved

R20-4-618. Reserved

R20-4-619. Reserved

R20-4-620. Repealed

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-620 recodified from R4-4-620 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

ARTICLE 7. ESCROW AGENTS

R20-4-701. Change in Location of Business

An escrow agent shall submit to the Director notice of any change in the location of the escrow agent's business. The escrow agent shall ensure that the Director receives the notice at least five days before the escrow agent conducts business at the new location. The escrow agent shall remit the fee required by A.R.S. § 6-126(A), to the Director with the notice of the location change.

Historical Note
Former Rule 1. R20-4-701 recodified from R4-4-701 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-702. Account Practices and Records

An escrow agent shall maintain records to enable the Director to reconstruct the details of each escrow transaction. The records shall include the following:
1. The seller's name and address;
2. The buyer's name and address;
3. The lender's name and address, if any;
4. The borrower's name and address, if any;
5. The real estate agent's name and address, if any;
6. Complete escrow instructions;
7. Records and supporting documentation for each receipt and disbursement made through the escrow; and
8. A copy of the escrow settlement.

Historical Note
Former Rule 2. R20-4-702 recodified from R4-4-702 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-703. Preservation of Records

An escrow agent shall preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction. An escrow agent may keep its records as electronic records if the escrow agent can generate all information and copies of documents required by A.R.S. § 6-831 within the timeframe set by the Department for examination or other purposes.

Historical Note
Former Rule 3. R20-4-703 recodified from R4-4-703 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-704. Subsidiary Account Records

An escrow agent shall maintain subsidiary account records that identify the funds deposited in each escrow account. The total of all credit balances in the subsidiary accounts shall always equal the balance of the general ledger control account.

Historical Note
Former Rule 4. R20-4-704 recodified from R4-4-704 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-705. Reserved

R20-4-706. Repealed

Historical Note

Former Rule 6. R20-4-706 recodified from R4-4-706 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-707. Expired

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). R20-4-707 recodified from R4-4-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 411, effective September 30, 2014 (Supp. 15-1).

R20-4-708. Financial Condition and Resources

The Director shall consider the following criteria in evaluating an escrow agent's, other escrow agent's, or applicant's financial condition and resources under A.R.S. § 6-817:

1. Amount of positive net worth,
2. Amount of tangible net worth,
3. Amount of liquid assets,
4. Amount of cash provided by operations,
5. Ratio of debt to net worth,
6. Owner's personal financial resources,
7. Outside resources available,
8. Profitability,
9. Projected operating results,
10. Status as agent for a title insurance company, and
11. Sources of new business.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

ARTICLE 8. TRUST COMPANIES

R20-4-801. Definitions

In addition to the definitions provided in A.R.S. § 6-851, the following terms apply to this Article unless the context otherwise requires:

"Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company.

"Affiliate" has the meaning stated at A.R.S. § 6-801.

"Director" has the meaning stated at A.R.S. § 20-102.

"Governing instrument" means a document, and all its operative amendments, that:

Creates a trust and regulates the trustee's conduct,
Creates an agency relationship between a trust department or trust company and a client, or
Otherwise evidences a fiduciary relationship between a trust department or trust company and a client.

"Investment responsibility" means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

"Person" has the meaning stated at A.R.S. § 20-105.

"Trust asset" means any property or property right held by a trust department or trust company for the benefit of another.

"Trust department" means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

"Trust funds" means any money held by a trust department or trust company for the benefit of another.

"Trustor" means a person who creates or funds a trust, or both.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-801 recodified from R4-4-801 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-802. Reserved

R20-4-803. Reserved

R20-4-804. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-804 recodified from R4-4-804 (Supp. 95-1). Repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

R20-4-805. Reports

A. Within 90 days following each December 31, each trust department and trust company shall file an annual report of trust assets with the Director on the form prescribed by the Director. The annual report shall include the current market value of all trust assets held by the trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by subsections R20-4-812(E) through (G).

B. Each trust company shall deliver a copy of its annual report and certificate of disclosure to the Director within 10 days of filing the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Director, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.

C. Each trust company shall notify the Director of any change in the directors or officers of the company within 10 days of the change. Any trust company with more than 25 officers may, after obtaining the Director's written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company's corporate operations or in the trust company's trust business in this state.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-805 recodified from R4-4-805 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-806. Records

A. Every trust company shall keep its records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. A trust company may keep its records as electronic records if the trust company can generate all information and copies required by

this Section within the timeframe set by the Department for examination or other purposes.

B. A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company, including the following:

1. A file for each account that includes:
   a. The governing instrument,
   b. All contracts and other legal documents,
   c. Copies of all correspondence,
   d. Accounting records disclosing all the financial transactions, and
   e. A listing of all the account's assets and liabilities.
2. An investment file for each account that includes:
   a. All original documentary evidence of the account's assets; or
   b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
   c. A record of the initial and annual investment reviews for the account.
3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company for itself, distinguishing them from those relating to the trust department's or trust company's trust business;
4. Unaudited financial statements. A trust department or trust company shall produce these statements quarterly or more frequently when required by the Director. The financial statements shall include at least:
   a. A balance sheet; and
   b. A statement of income, expenses, and retained earnings.
5. Adequate records of all pending litigation that names the trust department or trust company as a party.

C. A trust department shall keep its fiduciary records separate and distinct from the trust department's corporate records.

D. A trust department or trust company shall keep records described in subsections (B)(1) and (2) for at least three years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company shall keep that account's records, described in subsections (B)(1) and (2), for three years after the litigation is resolved.

Historical Note
Adopted effective September 1, 1977 (Supp. 77-3). R20-4-806 recodified from R4-4-806 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in Sections R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Director determines constitutes an unsafe or unsound business practice jeopardizing the trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's principal.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-807 recodified from R4-4-807 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-808. Administration of Fiduciary Powers

A. The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.

B. A trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company shall keep a written record of each new account approval and of the closing of each account. The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's board shall ensure that an annual review of account assets is conducted for each account in which the trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.

C. A trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona to advise and inform the trust department or trust company on fiduciary matters and all other legal issues presented to the trust department or trust company by the conduct of its trust business.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-808 recodified from R4-4-808 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-809. Fiduciary Duties

A trust department or trust company shall perform all fiduciary duties imposed upon it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;
3. Provide complete and accurate information about the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
   a. The trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
   b. The governing instrument provides otherwise; or
   c. A different frequency is established by a lawful course of dealing before the effective date of this Section; and
4. Comply with all lawful provisions of the governing instrument.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-809 recodified from R4-4-809 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-810. Funds Awaiting Investment or Distribution

A. Trust funds held by a trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.

B. A trust department or trust company may keep trust funds in deposit accounts maintained by the trust department or trust company unless prohibited by law or by the governing instrument. The trust department or trust company shall set aside collateral security for all deposited trust funds under a third party's control. The collateral shall be the following types of securities, in any combination:
   1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
   2. Any other obligations fully guaranteed by the United States government as to principal and interest;
   3. Obligations of a Federal Reserve Bank;
   4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
   5. Readily marketable securities that either:
      a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
      b. Satisfy state pledging requirements under A.R.S. § 6-245(C).

C. The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-810 recodified from R4-4-810 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-811. Investment of Trust Funds

A. A trust department or trust company shall invest trust funds according to:
   1. The governing instrument; and
   2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7501 through 14-7512

B. A trust department or trust company shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-811 recodified from R4-4-811 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-812. Self-dealing

A. A trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
   1. Its own securities;
   2. Other types of property acquired from the trust department or trust company;
   3. Property acquired from the trust department's or trust company's directors, officers, or employees;
   4. Property acquired from the trust department's or trust company's affiliates;
   5. Property acquired from its affiliates' directors, officers, or employees; or
   6. Property acquired from other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.

B. A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
   1. If the trust department or trust company has authority under subsection (A), and
   2. If those securities are offered pro rata to all stockholders of the trust department or trust company.

C. A trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
   1. Its directors, officers, or employees;
   2. Its affiliates;
   3. Its affiliates' directors, officers, or employees; or
   4. Other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.

D. However, a trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
   a. The proposed sale or loan avoids the contingent or potential liability;
   b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's minutes;
   c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
   d. The affected account is reimbursed, in cash, at no loss to that account; or
2. The Director requires or approves, in writing, the sale or loan to otherwise prohibited parties.

E. A trust department or trust company may sell trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

F. A trust department or trust company may loan trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

G. A trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
1. The transaction is fair to the borrowing account; and
2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-812 recodified from R4-4-812 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-813. Custody of Investments

A. A trust department or trust company shall keep each account's investments separate from its own assets. A trust department or trust company shall place each account's assets in the joint control of at least two officers or employees of the trust department or trust company designated in writing for that purpose by:
1. The trust department's or trust company's board of directors, or
2. One or more officers authorized by the trust department's or trust company's board of directors to make the designation.

B. A trust department or trust company shall either:
1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
2. Adequately identify each account's property in the trust department's or trust company's records.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-813 recodified from R4-4-813 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-814. Compensation

A. A trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. The trust department or trust company shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.

B. A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company in the administration of an account.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-814 recodified from R4-4-814 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-815. Collective Investments

A. All collective investments made by a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871 and maintained by the trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company acting as a fiduciary. A trust department or trust company shall not establish a common trust fund unless it first:
1. Prepares a written plan regarding the common trust fund; and
2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.

B. The plan shall describe the common trust fund's operational details, including a description of:
1. The trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund,
2. The manner for allocating the common trust fund's income and losses,
3. The criteria for admission to or withdrawal from participating in the common trust fund, and
4. The method for valuing assets in the common trust fund and the frequency of valuation.

C. A trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B), and shall provide a copy of the plan upon request.

D. The annual report required under R20-4-805(A) shall include all common trust funds operated by the trust department or trust company.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-815 recodified from R4-4-815 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by

final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

A. Any trust department that wants to surrender its trust powers shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust department has no remaining fiduciary duties, the Director shall notify the trust department that it no longer has authority to exercise trust powers.

B. Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Director shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.

C. After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Director's supervision shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust company has no further fiduciary duties, the Director shall notify the trust company that it no longer has authority to exercise fiduciary powers.

D. Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them canceled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company or its stockholders, directors, or officers.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-816 recodified from R4-4-816 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

Appendix A. Repealed

Historical Note

Appendix A repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

Appendix B. Repealed

Historical Note

Appendix B repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

ARTICLE 9. MORTGAGE BROKERS

R20-4-901. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-901 recodified from R4-4-901 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-902. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-902 recodified from R4-4-902 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-902 (A)(1) only applies to a person whose offers to make or negotiate a mortgage loan, as defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:

1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its mortgage lending activities; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage lending activities.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-903 recodified from R4-4-903 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-904. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-904 recodified from R4-4-904 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-905. Repealed

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-905 recodified from R4-4-905 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-906. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage broker with license from another state, or responsible individual for a mortgage broker licensed in another state;

6. Mortgage banker with license from another state, or responsible individual for a mortgage banker licensed in another state;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage broker or mortgage banker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6 Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-906 recodified from R4-4-906 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-907. Course of Study

A. A course of study shall be satisfactorily completed if the applicant has:
1. Attended at least 24 hours of class, and
2. Received a passing grade on the final exam.

B. A course of study shall meet all the following requirements:
1. The following items shall be submitted by the school to the Superintendent on an annual basis:
   a. Course materials;
   b. Class content outlines on a session-by-session basis; and
   c. Sample final exam.
2. The following subjects shall be taught:
   a. Mortgage, deed of trust, and security agreement law;
   b. Negotiable instrument law;
   c. Mortgage broker law;
   d. Escrow agent law;
   e. Recordkeeping requirements of R20-4-917;
   f. Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation requirements;
   g. Ethics;
   h. Principal and agent law;
   i. Arithmetical computations common to mortgage brokerage;
   j. Real estate lending principles;
   k. Real estate law;
   l. Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617, and Consumer Credit Protection Act, 15 U.S.C. 1601 through 1666j; and
   m. Securities law.
3. A final exam shall be given that substantially tests the student's knowledge of the subjects described above.

C. The Superintendent shall review the items submitted to the Department and determine within 60 days of submission whether the proposed course of study is satisfactory. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory, or if the Superintendent has not received the course materials, course content outlines, and sample final exam within the prior 13 months, the Superintendent may withhold or suspend approval.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-907 recodified from R4-4-907 (Supp. 95-1).

R20-4-908. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-908 recodified from R4-4-908 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-909. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-909 recodified from R4-4-909 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-910. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-910 recodified from R4-4-910 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-911. Qualified Replacement Responsible Individual

If a licensee chooses an individual to serve as a replacement responsible individual and that individual has not satisfactorily completed

the course of study required by A.R.S. § 6-903(B)(2) or passed the mortgage broker examination required by A.R.S. § 6-903(B)(3), and is not given the opportunity to do so prior to the expiration of the 90-day time period provided in A.R.S. § 6-903(F), but otherwise meets the requirements of A.R.S. § 6-903(B), the individual shall be qualified as a replacement responsible individual until the next course of study has been held and, if the person successfully completes the course of study, until the mortgage broker examination next following the completion of the course of study has been held and the results of the examination are available. If the individual fails to satisfactorily complete the course of study or fails the mortgage broker examination, the licensee shall then have a new 90-day time period within which to place itself under the active management of a qualified responsible individual. Notwithstanding the foregoing, a licensee shall have no longer than 180 days within which to place the license under the active management of a qualified responsible individual unless the Superintendent grants additional time to the licensee for good cause shown.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-911 recodified from R4-4-911 (Supp. 95-1).

R20-4-912. Restrictions on the Term of a Cash Alternative
If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-903(J), the certificate of deposit or investment certificate shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-912 recodified from R4-4-912 (Supp. 95-1).

R20-4-913. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-913 recodified from R4-4-913 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-914. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-914 recodified from R4-4-914 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-915. Requirements for a Person Intended to Oversee a Branch Office
A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-915 recodified from R4-4-915 (Supp. 95-1).

R20-4-916. Notification of Change of Address
If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within five business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the Department the license for the office changing addresses together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-916 recodified from R4-4-916 (Supp. 95-1).

R20-4-917. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system;
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage broker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied, etc.); and
   f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose, including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose, including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;

h. Date disbursed;
i. Disbursement's payee and purpose; and
j. Balance;

6. A file for each application for a mortgage loan containing:
   a. The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both;
   b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement, and escrow instructions to or with any depository;
   e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
   f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor;
   g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
   h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage broker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (B)(6) for the length of time provided in A.R.S. § 6-906. For the purposes of A.R.S. § 6-906, a mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
2. The date a licensee mails written notice to an applicant that the application has been denied, as required by federal law.

E. A licensee shall maintain all records described in this Section, and not included in subsection (D), for at least two years.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-917 recodified from R4-4-917 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-918. Repealed

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-918 recodified from R4-4-918 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-919. Deposit of Monies Received by a Mortgage Broker
All monies received by a mortgage broker which are required to be deposited into an escrow account with an escrow agent licensed pursuant to A.R.S. § 6-801 et seq. shall be so deposited by 5:00 p.m. on the next business day after receipt of the funds.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-919 recodified from R4-4-919 (Supp. 95-1).

R20-4-920. Requirements for the Testing Committee

A. No licensee shall submit more than five names as nominees to serve on the testing committee. The resumes of the nominees shall be included. The names and resumes shall be submitted to the Superintendent no later than August 1 of each even-numbered year. On or before September 30 of each even-numbered year, the Superintendent shall appoint four persons from the nominees submitted and one employee of the Department as members of the testing committee. A person may serve more than one two-year term. If the Superintendent does not find at least four persons from the list to be acceptable, the Superintendent shall solicit additional nominees from licensees.

B. In the event of a vacancy on the testing committee, the remaining members of the committee shall submit a list of nominees within 45 days of the vacancy to the Superintendent containing not less than two nominees for each vacancy. The Superintendent shall then appoint a nominee from the list to fill each vacancy for the remainder of the term. If the Superintendent does not find at least one person from the list to be acceptable to fill each vacancy, the remaining members of the committee shall, upon request, submit an additional list of nominees to the Superintendent.

C. The Superintendent may remove any member of the committee at any time without cause.

D. The committee shall review and revise questions on the test not less than once every two years. All questions used on the test shall first be submitted to and approved by the Superintendent.

E. The committee shall inform the applicant of the applicant's score on the test in writing within 30 days of administration of the test.

F. The handbook for mortgage brokers shall be updated by the committee as necessary to reflect changes in the law.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-920 recodified from R4-4-920 (Supp. 95-1).

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties; and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-921 recodified from R4-4-921 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-922. Determining Loan Amounts

In determining the amount of a mortgage loan pursuant to A.R.S. § 6-909(D) or (G), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties or compensation retained by the mortgage broker or its agents.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-922 recodified from R4-4-922 (Supp. 95-1).

R20-4-923. Delay or Cause Delay

A mortgage broker shall not be deemed to have delayed or caused delay if such delay occurs due to events outside the control of the mortgage broker.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-923 recodified from R4-4-923 (Supp. 95-1).

R20-4-924. Receipt and Disbursement of Monies

A licensee is not receiving or disbursing monies in servicing or arranging a mortgage loan if the licensee, at the request of the lender or servicing agent, on an infrequent basis, assists in the collection or servicing of a mortgage loan by receiving from the borrower a check or draft payable to the lender or servicing agent and forwarding such instrument to the lender or servicing agent not later than 5:00 p.m. on the next business day after receipt by the licensee. For the purposes of this rule, an infrequent basis means, with regard to a particular loan, for not more than 25% of the regularly scheduled payments of the mortgage loan during any calendar year.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-924 recodified from R4-4-924 (Supp. 95-1).

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-927. Conversion to Commercial Mortgage Broker License

A. Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period established by A.R.S. § 6-904.

B. The licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).

C. The licensee seeking conversion shall submit:

1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
2. The information and documents required by A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-928. Certificate of Exemption Application and Renewal

A. Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of $300.

B. A person holding a certificate of exemption shall pay a renewal fee of $150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. While the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business as a loan originator. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus $25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and

applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certificate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).

C. In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).

D. The following fees are payable to the Department:
1. To change the name of the federally chartered savings bank on a certificate of exemption: $250.00.
2. To change the responsible individual for the exempt entity: $250.00.
3. To issue a duplicate or replace a lost certificate of exemption: $100.00.
4. To change the address of the federally chartered savings bank on a certificate of exemption: $50.00.

Historical Note
New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE

R20-4-1001. Notice of Change of Location of Safe Deposit Repository

A. A corporation or association that moves a repository shall give written notice of the location change to the Director and to its customers.
1. A corporation or association shall provide notice of the location change to the Director by mailing the notice required under this subsection by first class mail no less than 30 days before the scheduled moving date. The corporation or association shall include a copy of the notice to customers required under subsection (B).
2. A corporation or association shall provide notice of the location change to its customers by:
   a. Publishing notice of the change of location in:
      i. An English language newspaper of general circulation in the county where the repository will be closed,
      ii. In a weekly newspaper for two consecutive publications, or
      iii. In a daily newspaper for three consecutive days; and
   b. Publishing the notice no more than 90 days, and no less than 30 days, before the scheduled moving date.

B. The corporation or association shall include all the following information in the notice:
1. The date the corporation or association intends to move the repository,
2. The earliest date a customer can remove contents and transact other business related to the move,
3. The latest date a customer can remove contents and transact other business related to the move,
4. The street address of the repository to be closed, and
5. The street address of the new repository.

Historical Note
Former Rule 1. R20-4-1001 recodified from R4-4-1001 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 5227, effective February 4, 2003 (Supp. 02-4). Preceding Historical Note entry corrected to read 2003 instead of 2002 (Supp. 03-1). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES

R20-4-1101. Capital Structure of Banks; Defined

"Capital structure" as the term is applied to banks under Article 2.1, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following reserves and capital accounts of the institution as stated in the institution's report of condition required by the supervisory banking authority for the year end next preceding the institution's bid for deposit:
1. Reserve for bad debt losses on loans,
2. Other reserves on loans,
3. Reserves on securities,
4. Capital notes and debentures,
5. Preferred stock – total par value,
6. Common stock – total par value,
7. Surplus,
8. Undivided profits, and
9. Reserve for contingencies and other capital reserves.

Historical Note
Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1101 recodified from R4-4-1101 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1102. Expired

Historical Note
Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1102 recodified from R4-4-1102 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 5, 2020 (Supp. 20-1).

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR

R20-4-1201. Scope of Article; Definitions

A. Scope. This Article, Title 6, Title 32, Chapters 9 and 36, and Title 44, Chapter 2.1 of the Arizona Revised Statutes govern administrative hearings before the Department. The Department shall use the authority of A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' procedural rules and this Article to govern the initiation and conduct of administrative hearings. In an administrative hearing, special procedural requirements in state statute or another Section in this Article shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' rules, or this Article. Except as otherwise provided in Section R20-4-1220 for rulemaking petitions, this Article does not apply to rulemaking or to investigative proceedings before the Director. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to administrative hearings.

B. In addition to the definitions provided in A.R.S. §§ 41-1001 and 41-1092, the following terms apply to this Article:

"Administrative Hearing" means an appealable agency action as defined by A.R.S. § 41-1092(3) or a contested case as defined by A.R.S. § 41-1001(5) subject to A.R.S. Title 41, Chapter 6, Article 10.

"Attorney General" means the Attorney General of Arizona, and the Attorney General's assistants and special agents.

"Department" means the Arizona Department of Insurance and Financial Institutions – Financial Institutions Division.

"Director" has the meaning stated at A.R.S. § 20-102.

"Party" has the meaning prescribed at A.R.S. § 41-1001(16) and includes any person or entity subject to the jurisdiction of the Department under A.R.S. Title 6, Title 32 - Chapter 9, Title 32 - Chapter 36, and Title 44 - Chapter 2.1.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1201 recodified from R4-4-1201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1202. Appearance and Practice before the Director for Administrative Hearings

A. A party may appear on their own behalf or through counsel.

B. When an attorney other than the Attorney General appears or intends to appear before the Director or the Department, they shall promptly disclose their name and contact information and the name and contact information of the party on whose behalf they intend to appear.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1202 recodified from R4-4-1202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1203. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1203 recodified from R4-4-1203 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1204. Filing; Service

A. A document filed by a party with the Department is filed on the date it is received by the Department as established by the Department's earliest stamped date on the face of the document or by some other method of affixing a received date by the Department.

B. If a party is represented by an attorney, service is effectuated by service upon the attorney unless additional service upon the represented party is required by an administrative law judge or the Department.

C. A document is served upon a party as provided for under A.R.S. § 41-1092.04 and Section R2-19-108. A party effectuating service is responsible for producing proof of service if requested by the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1204 recodified from R4-4-1204 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended to correct a typographical error in subsection (B) (Supp. 01-4). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1205. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1205 recodified from R4-4-1205 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1206. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1206 recodified from R4-4-1206 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1207. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1207 recodified from R4-4-1207 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1208. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1208 recodified from R4-4-1208 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Repealed by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1209. Answer to Notice of an Administrative Hearing

A. The Department may, in a notice of hearing, direct one or more parties to file a written answer to the allegations contained in the notice of hearing. Even if not directed to do so, any party to the proceeding may file an answer.

B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Department may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.

C. An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the allegations in the notice of hearing. An answering party who does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an allegation shall state that inability which shall have the effect of a denial. Any allegation not denied is admitted. A party who intends to deny only a part of an allegation, shall expressly admit as much of that allegation as is true and shall deny the remainder.

D. A party who fails to file an answer required by this Section within the time allowed is in default. The Director may resolve

the proceeding against a defaulting party. In doing so, the Director may regard any allegations in the notice of hearing as admitted by the defaulting party.

E. Defenses not raised in the answer are waived.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1209 recodified from R4-4-1209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1210. Stay Pending a Hearing

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Director stay an action or any part of an order that will become effective before a hearing. The Director may, in the Director's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Director grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1210 recodified from R4-4-1210 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1211. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1211 recodified from R4-4-1211 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Repealed by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1212. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1212 recodified from R4-4-1212 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1213. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1213 recodified from R4-4-1213 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1214. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1214 recodified from R4-4-1214 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1215. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1215 recodified from R4-4-1215 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1216. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1216 recodified from R4-4-1216 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1217. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1217 recodified from R4-4-1217 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1218. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1218 recodified from R4-4-1218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1219. Request for Rehearing or Review

A. Any party aggrieved by an administrative decision may file with the Director within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for the request.

B. A party filing a motion under this Section may amend the motion at any time before a response to the motion is filed. An amended motion tolls the time for filing a response and the time for rendering a decision on the motion.

C. A request for rehearing or review which is not timely filed is deemed waived for the purpose of judicial review.

D. A motion for rehearing or review shall specify which of the grounds listed in subsection (G) it is based upon and shall set forth the specific facts and laws in support of the motion. A motion may cite relevant portions of testimony from the hearing if a transcript is provided with the motion and may cite hearing exhibits by reference to the exhibit number. The motion shall specify the relief sought by the request, such as a different finding of fact, conclusion of law or order and may seek multiple forms of relief in the alternative. When a motion for rehearing or review is based on an affidavit, the moving party shall attach the affidavit to the motion.

E. A party may file a separate request for a stay of the Director's decision. Filing a stay request or a motion for rehearing or review does not stay an order filed by the Director. The Director may stay an order pending the resolution of a motion for rehearing or review.

F. Each party served with a motion for rehearing or review shall be permitted to file a written response within 15 days after the motion has been filed. Affidavits may be attached to and filed with a response. A response may cite relevant portions of testimony from the hearing if a transcript is provided with the

response and may cite hearing exhibits by reference to the exhibit number. The Director has the discretion to hear oral argument to consider a request for rehearing or review.

G. The Director may grant a motion for rehearing or review for any of the following causes:
1. Irregularity in the proceedings before the Department, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct by the Department, the administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary care;
4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing; and
7. The decision is not justified by the evidence or is contrary to law.

H. The Director may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (G). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.

I. The Director, within the time for filing a motion for rehearing, may without a motion for rehearing, order a rehearing for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.

J. The Director may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1219 recodified from R4-4-1219 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1220. Petition for Rulemaking Action

A. The following definitions apply in this Section.
1. "Petitioner" means a person who petitions the Department for Rulemaking action as authorized under A.R.S. § 41-1033(A).
2. "Rule" has the meaning stated at A.R.S. § 41-1001 and is enforceable by the Department.
3. "Rulemaking action" means the process for formulation and finalization of a new rule, or amendment or repeal of an existing rule.
4. "Substantive Policy Statement" has the meaning stated at A.R.S. § 41-1001, is advisory only, and is not enforceable by the Department.

B. Any person may petition the Department under A.R.S. § 41-1033(A) to either:
1. Make, amend, or repeal a final Rule; or
2. Review an existing agency practice or Substantive Policy Statement that the Petitioner alleges to constitute a Rule.

C. A person who files a petition pursuant to A.R.S. § 41-1033(A), shall include the following information in the petition:
1. The Petitioner's name and contact information;
2. The name and address of any organization the Petitioner represents;
3. Whether the Petitioner is petitioning the Department to:
   a. Make, amend, or repeal a final Rule; or
   b. Review an existing agency practice or Substantive Policy Statement that the Petitioner alleges to constitute a Rule;
4. A detailed explanation of Petitioner's basis for submitting the petition;
5. If the Petitioner is petitioning the Department to make a Rule, the language of the proposed new Section and the specific authority for the requested Rulemaking action;
6. If the Petitioner is petitioning the Department to amend an existing Rule, a citation to the existing Section to be amended, the language of the proposed Rule amendment, and the specific authority for the requested Rulemaking action;
7. If the Petitioner is petitioning the Department to repeal an existing Rule, a citation to the existing Section or subsection to be repealed, and an explanation of why the Rule should be repealed including, if applicable, how the Rule does not meet the requirements of A.R.S. § 41-1030;
8. If the Petitioner is petitioning the Department to review an existing agency practice that the Petitioner alleges to constitute a Rule, a description of the Department's practice, an explanation of how the Department's practice constitutes a Rule being enforced by the Department, the language of the proposed new Rule, and the specific authority for the requested Rulemaking action;
9. If the petitioner is petitioning the Department to review a Substantive Policy Statement that the Petitioner alleges to constitute a Rule, a citation to the Substantive Policy Statement, an explanation of how the Substantive Policy Statement is being enforced by the Department as a Rule, the language of the proposed new Rule, and the specific authority for the requested Rulemaking action; and
10. The Petitioner's dated signature.

D. The petitioner may submit additional supporting information, including:
1. Statistical data; and
2. A list of other persons and entities likely to be affected by the proposed Rulemaking action, with an explanation of the likely effects.

E. Within 60 days of the date the Department receives the petition, the Director shall send the petitioner a written decision indicating whether the Department is denying the petition or will initiate the requested Rulemaking action, with the reasons for the decision.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1220 recodified from R4-4-1220 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Section repealed; new Section amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4). Subsections C(5) through (10), (D) and (E) omitted when codified in Supp. 22-4; the rule text has been published as promulgated at 28 A.A.R. 3620 (Supp. 24-1).

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1302. Course of Study to Qualify for Licensure

A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).

B. An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 hours of instruction, and
2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).

C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
5. The remaining eight hours should be comprised of instruction in:
   a. The obligations between principal and agent;
   b. The statutory and regulatory laws governing loan originators;
   c. Arithmetical computations common to mortgage lending;
   d. Principles of real estate lending;
   e. The purpose and effect of mortgages, deeds of trust, and security agreements;
   f. The terms and conditions of conforming and non-conforming residential mortgages;
   g. Real estate appraisal; and
   h. The principles of appraisal independence.

D. A continuing education course of study shall include eight hours of instruction each year in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:
1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of $100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1304. Fees

Loan Originator program fees:
1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): $350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): $150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): $150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): $50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): $50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): $25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

ARTICLE 14. INVESTIGATIONS

R20-4-1401. Definitions

In this Article, unless the context otherwise requires:

1. "Examination" means reviewing an applicant's or licensee's operations, books, and records for any lawful purpose, including those listed in A.R.S. § 6-124(A).
2. "Investigation" means an inquiry, other than an examination, into the affairs of a licensed or unlicensed entity including a review of the entity's operations, books, and records, conducted by the Director for any lawful purpose, including those listed in A.R.S. § 6-124(A).
3. "Licensee" means a financial institution or enterprise licensed with the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1401 repealed, new Section R4-4-1401 renumbered from R4-4-1402 and amended effective August 14, 1991 (Supp. 91-3). Amended effective August 14, 1991 (Supp. 91-3). R20-4-1401 recodified from R4-4-1401 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1958 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1402. Repealed

Historical Note

Former Section R4-4-1402 renumbered to R4-4-1401, new Section R4-4-1402 adopted effective August 14, 1991 (Supp. 91-3). R20-4-1402 recodified from R4-4-1402 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Director's Subpoena Power

The Director may serve a subpoena using any means intended to effectuate delivery of the subpoena. A Department employee, or an attorney or agent of the Attorney General's office, may accomplish service for the Director. The Director may amend a subpoena at any time, and may serve the amended subpoena as provided in this Section. Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Director may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1403 repealed, new Section R4-4-1403 renumbered from R4-4-1407 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1403 recodified from R4-4-1403 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1958 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1404. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1404 recodified from R4-4-1404 (Supp. 95-1).

R20-4-1405. Background Information

A. In connection with an examination or investigation, the Director may investigate the following persons' background:

1. An applicant or a licensee, or a person whom the Director reasonably believes may be violating any statute or rule administered by the Director; and
2. An officer, director, agent, employee, partner, joint venturer, affiliate, or other person associated with a person described in subsection (A)(1), if the other person has or had any involvement in or control over the activities of the person described in subsection (A)(1).

B. In connection with an examination or investigation, the Director may require a person described in A.R.S. § 6-123.01(A) or (E) to submit a statement of personal history to the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1405 repealed, new Section R4-4-1405 renumbered from R4-4-1409 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1405 recodified from R4-4-1405 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1958 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1406. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1406 recodified from R4-4-1406 (Supp. 95-1).

R20-4-1407. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1403 effective August 14, 1991

(Supp. 91-3). R20-4-1407 recodified from R4-4-1407 (Supp. 95-1).

R20-4-1408. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1408 recodified from R4-4-1408 (Supp. 95-1).

R20-4-1409. Renumbered

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1405 effective August 14, 1991 (Supp. 91-3). R20-4-1409 recodified from R4-4-1409 (Supp. 95-1).

R20-4-1410. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1410 recodified from R4-4-1410 (Supp. 95-1).

ARTICLE 15. COLLECTION AGENCIES

R20-4-1501. Definitions

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
2. "Active Manager" means the person who is in active management of the conduct of the collection agency's business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. "Client" means a person who has hired a collection agency to collect a debt.
4. "Collection agency" has the meaning in A.R.S. § 32-1001(2).
5. "Contact" means to communicate with, and includes attempted communications.
6. "Credit bureau" or "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. "Creditor" means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. "Debt" means a debtor's actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. "Debtor" means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. "Director" has the meaning stated at A.R.S. § 20-102.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1501 recodified from R4-4-1501 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1502. Applications

A. An applicant for a license shall complete and file an application, as required by the Department, by delivering the application to the Director, together with the following documents and payment:
1. The bond required by A.R.S. § 32-1021;
2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
3. A current financial statement in the form required by the Department;
4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and
5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.

B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.

C. A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Director before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.

D. An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Director within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
1. A bond that satisfies the requirements of A.R.S. § 32-1022;
2. A current financial statement as required by the Department;
3. A detailed description of the facts justifying the issuance of a provisional license; and
4. Evidence that the licensee notified the Director as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.

E. An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
1. A licensee's personal representative, or the personal representative's appointee, shall complete and file an application if the licensee, a natural person, has died;
2. The surviving partners shall complete and file an application if the licensee, a partnership, has dissolved;

3. A licensee shall complete and file an application if an active manager's employment was terminated.

F. An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."

G. The Director may require additional information the Director considers necessary in connection with any application under this Section.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1502 recodified from R4-4-1502 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1503. Reports

A collection agency shall notify the Director in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than 10 days after the change. With the notice, the collection agency shall provide the Director with a Statement of Personal History for each new officer, director, partner, or active manager on a form obtained from the Department.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1503 recodified from R4-4-1503 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1504. Records

A. A licensee may keep its books, accounts, and records as electronic records if the licensee can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:

1. Records or books of account listing all clients' accounts. Each account shall reflect its true condition at each calendar month's end, and shall include:
   a. The client's name and address;
   b. Each debtor's name worked for collection in that month;
   c. The amount, description, and date of each debit and each credit to the account; and
   d. The balance due to, or owing from, the client.
2. A record and history of each debt for collection that clearly shows:
   a. The debtor's name;
   b. The debt's principal amount;
   c. The interest charged or collected;
   d. The amount, and description, of any other charges;
   e. The amount, and date, of each payment received or collected; and
   f. The current balance due on the debt.
3. An original of each written contract between the licensee and a client, including any contract amendments.
4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Director.
5. The licensee's trust account reconciliation, prepared at least once a month.
6. Books, records, and files maintained so that the Director can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.
8. A record of fictitious names used by the agency's debt collectors as required by R20-4-1520.

C. A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.

D. A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Director demands the records.

E. A licensee shall retain the records required by this Section for the following periods:

1. A licensee shall retain all records described in subsections (B)(1), and (B)(3) through (8) for at least seven years following their creation.
2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1504 recodified from R4-4-1504 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1505. Trust Account

A. A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account at a federally insured depository institution in Arizona. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a federally insured depository institution in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:

1. Paid over to a client, or
2. Otherwise paid as provided in this Section.

B. A licensee shall pay funds from the trust account either:

1. By prenumbered printed checks, or
2. By electronic payment.

C. A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commin-

gle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.

D. A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-307, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.

E. A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.

F. A licensee shall not pay funds from its trust account except as:
1. Provided in this Section,
2. Expressly authorized in its contract with a client, or
3. Authorized in writing by the Director.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1505 recodified from R4-4-1505 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

A. A collection agency organized as a corporation shall file with the Director a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Director, an officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.

B. A collection agency organized as a corporation shall file with the Director a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

C. A collection agency not organized as a corporation shall file with the Director a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1506 recodified from R4-4-1506 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1507. Representations of Collection Agency's Identity

In all communications with debtors, either orally or in writing, all the following rules apply:
1. A collection agency shall represent itself as a collection agency,
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not,
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency, and
4. A collection agency shall not directly or indirectly claim to be a law firm.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1507 recodified from R4-4-1507 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1508. Representations of the Law

A collection agency shall not:
1. Misrepresent the state of the law to a debtor;
2. Send a debtor written material that simulates legal process; or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1508 recodified from R4-4-1508 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

A. A collection agency shall not threaten to collect, or attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.

B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.

C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.

D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.

E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in the collection agency filing the lawsuit against the debtor.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1509 recodified from R4-4-1509 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1510. Representations as to Rights Waived or Rem-

edies Available

A. A collection agency shall not inform a debtor that:
1. The debtor waives any legal right or legal defense by a failure to contact the collection agency, and
2. The collection agency has the power or right to bypass the legal process.

B. A collection agency shall not misrepresent the remedies available to the collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1510 recodified from R4-4-1510 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1511. Prohibition of Harassment

A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.

B. A collection agency shall not use written or oral communications that ridicule, disgrace, or humiliate any person, or tend to ridicule, disgrace, or humiliate any person.

C. A collection agency shall not state, imply, or tend to imply, in written or oral communications, that any person is guilty of fraud or any other crime.

D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.

E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1511 recodified from R4-4-1511 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1512. Contacts with Debtors and Others

A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.

B. A collection agency shall not threaten to or contact a third party, including a debtor's friend, relative, neighbor, or employer and:
1. Inform the third party of the debt;
2. Ask the third party to pressure the debtor into paying the debt; or
3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.

C. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1512 recodified from R4-4-1512 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1513. Cessation of Communication with the Debtor

A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through the debtor's lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.

B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
1. Refuses to pay the debt, or
2. Wants the collection agency to stop all further communication with the debtor.

C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
1. The collection agency has stopped trying to collect the debt, or
2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.

D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1513 recodified from R4-4-1513 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1514. Disclosure of Information to Debtor

A. Within five days after the initial communication with the debtor, a collection agency shall obtain and be able to inform the debtor of:
1. The name of the creditor;
2. The time and place of the creation of the debt;
3. The merchandise, services, or other value provided in exchange for the debt; and
4. The date when the account was turned over to the collection agency by the creditor.

B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).

C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978

(Supp. 78-6). R20-4-1514 recodified from R4-4-1514 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1515. Aiding and Abetting

A collection agency shall not help or encourage, directly or indirectly, any person to evade or violate any provision of:

1. This Article, or
2. A.R.S. Title 32, Chapter 9.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1515 recodified from R4-4-1515 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1516. Advertising

A collection agency shall not use any form of communication to state or imply that the collection agency is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1516 recodified from R4-4-1516 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1517. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1517 recodified from R4-4-1517 (Supp. 95-1). Section repealed by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1518. Agreements with Clients

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court, or to practice law in any other way, is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1518 recodified from R4-4-1518 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1519. Licensee Names and Control

A. The Department shall not issue a license with a name that is:

1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
2. Descriptive of any business activity that the applicant does not actually conduct;
3. The same as, or similar to, the name of any existing collection agency, or
4. Otherwise deceptive or misleading.

B. The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the existing collection agency.

C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1519 recodified from R4-4-1519 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1520. Representations of Collection Agency Employees' Identity or Position

A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:

1. Misrepresent the person's true position with the collection agency;
2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law;
3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee; or
4. Claim to be, or imply that the person is, any other third party.

B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.

C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:

1. The true name of each debt collector that uses a fictitious name;

2. Each fictitious name used by the debt collector, together with the dates when the name is used; and
3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1520 recodified from R4-4-1520 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1521. Duty of Investigation

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney upon request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified,
2. The debt has been paid,
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1521 recodified from R4-4-1521 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1522. Reserved

R20-4-1523. Reserved

R20-4-1524. Reserved

R20-4-1525. Reserved

R20-4-1526. Reserved

R20-4-1527. Reserved

R20-4-1528. Reserved

R20-4-1529. Reserved

R20-4-1530. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1530 recodified from R4-4-1530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS

R20-4-1601. Definitions

In addition to the definitions provided in A.R.S. § 6-141, the following terms apply to this Article unless the context otherwise requires:

"Acquiring party" means a person who intends to acquire control of a bank, trust company, savings and loan association, or controlling person under A.R.S. Title 6, Chapter 1, Article 4.

"Bank" has the meaning stated in A.R.S. § 6-101.

"Director" has the meaning stated in A.R.S. § 6-101(7).

"Savings and loan association" means a person required to possess a permit issued by the Director under A.R.S. Title 6, Chapter 3.

"Target company" means a bank, savings and loan association, trust company, or controlling person to be acquired by an acquiring party.

"Trust company" has the meaning stated in A.R.S. § 6-851.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1601 recodified from R4-4-1601 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

A. An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter 1, Article 4, shall file with the Director copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.

B. As used in this subsection, "executive officer" includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter 1, Article 4 shall supply all information the Director requires under this subsection. The Director may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:

1. A copy of the signed purchase agreement;
2. The applicant's audited financial statement;
3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party;
4. Each executive officer's and each director's personal financial statement;
5. A full set of fingerprints for each executive officer and each director; and
6. A copy of each executive officer's and each director's driver's license.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1602 recodified from R4-4-1602 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1603. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1603 recodified from R4-4-1603 (Supp. 95-

1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

R20-4-1701. Definitions
In addition to the definitions provided in A.R.S. § 6-321, the following terms apply to this Article unless the context otherwise requires:

"Applicant" means an out-of-state financial institution that intends to acquire control of an in-state financial institution.

"Director" has the meaning stated in A.R.S. § 6-101(7).

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1702. Notice to the Director of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter

A. An applicant shall give written notice of an acquisition to the Director in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Director not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Director may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.

B. An acquired in-state financial institution shall surrender, by delivery to the Director, all permits and certificates issued by the Director within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand-alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1703. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

A. An applicant shall transmit to the Director one copy of each notice and the publisher's affidavit of publication required by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

B. An applicant shall provide the Director copies of any protests known to have been received by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1705. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

ARTICLE 18. MORTGAGE BANKERS

R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a "mortgage banking loan" or a "mortgage loan," as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, mortgage lending activities, or both.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1802. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited toward qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage banker or mortgage broker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6. Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent at least five business days before the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-1806. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied); and
   f. Name of loan officer;

2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;
   h. Date disbursed;
   i. Disbursement's payee and purpose; and
   j. Balance;
6. A file for each application for a mortgage banking loan or a mortgage loan containing:
   a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
   b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement and escrow instructions to or with any depository;
   e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
   f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;
   g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.

E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1807. Providing Copies of Records
For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker, the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:
1. The closing instructions;
2. Any applicable rescission notice;
3. The HUD-1 settlement statement;
4. The final truth-in-lending disclosure;
5. The note;
6. The executed deed of trust or mortgage; and
7. Each assignment of beneficial interest by the mortgage banker licensee.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1808. Authorization to Complete Blank Spaces
An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1809. Determining Loan Amounts
The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties, or compensation retained by a mortgage banker or its agents.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1810. Delay or Cause Delay
A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1811. Impound Account
The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner
A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1813. Conversion to Mortgage Broker License
Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.

Historical Note
New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1901. Exemption for an Institutional Investor

A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:
1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
2. The claimant does so in the regular course of business;
3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
5. The claimant makes only loans of more than $250,000.

B. If a claimant makes even one commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a "commercial mortgage loan," as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its commercial mortgage lending activities;
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's commercial mortgage lending activities.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1903. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience towards the

three years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
5. Lender's branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
9. Attorney certified by any state as a real estate specialist.

B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond
A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office
A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One Person may oversee more than one branch.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1906. Notification of Change of Address
If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within five business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1907. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied); and
   f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;
   h. Date disbursed;
   i. Disbursement's payee and purpose, and
   j. Balance.

6. A file for each application for a commercial mortgage loan containing:
   a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
   b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement, and escrow instructions to or with any depository;
   e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
   f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
8. Copies of governmental or regulatory reviews;
9. If the licensee is a not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from the applicant; or
2. The date a licensee mails written notice to an applicant that an application has been denied; or
3. The date of a licensee's internal memorandum closing a loan file.

E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:
1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing party, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

Department of Insurance and Financial Institutions

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 1. General

Authorizing Statute

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receiving the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116), or its successor, and use the system for all aspects of licensure pursuant to this title, title 32, chapter 9 and title 44, chapter 2.1. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

Implementing Statutes

6-121. Examination; supervision

All financial institutions and enterprises shall be subject to examination and supervision by the department.

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receiving the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116), or its successor, and use the system for all aspects of licensure pursuant to this title, title 32, chapter 9 and title 44, chapter 2.1. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-123.01. Fingerprint requirements; fees

A. Before receiving and holding a license, permit, certificate or permission to organize a bank, savings and loan association or credit union, the deputy director may require an applicant, licensee, active manager or responsible individual, an organizer, director or officer of any corporate applicant or licensee, any individual in control of a licensee or applicant, any individual who seeks to acquire control of a licensee or each key individual to submit a full set of fingerprints and fees to the department. The department of insurance and financial institutions shall submit the fingerprints and fees to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. The fees that the department collects under subsection A of this section shall be credited pursuant to section 35-148.

C. The applicant is responsible for providing the department with readable fingerprints. The applicant shall pay any costs that are attributable to refingerprinting due to the unreadability of any fingerprints and any fees that are required for the resubmission of fingerprints.

D. The department may issue a temporary license or certificate or grant temporary permission to organize to an original applicant before the department receives the results of a criminal records check if there is not evidence or reasonable suspicion that the applicant has a criminal history background that would be cause for denial of a license, certificate or permission to organize. The department may terminate the temporary license or certificate or permission to organize if a fingerprint card is returned as unreadable and the applicant fails to submit new fingerprints within ten days after being notified by the department that the original card was unreadable or if the results of the criminal records check reveal grounds for the denial of the license or certificate or permission to organize. The temporary license or certificate or permission to organize shall not be effective longer than one hundred eighty days.

E. The deputy director may require a current licensee, organizer, director, active manager, responsible individual or officer of any corporate licensee to submit a full set of fingerprints to the department. The department of insurance and financial institutions shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

F. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

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.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 7

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to thirty-four (34) rules in Title 6, Chapter 7, Articles 1, 4, 6 and 7 regarding Child Support Enforcement. Specifically, the Articles relate to the following:

- Article 1 - General Provisions
- Article 4 - Passport Denial
- Article 6 - Title IV-D Distribution
- Article 7 - Title IV-D Disbursement

In the previous 5YRR for these rules, which was approved by the Council in December 2019, the Department proposed to amend the Chapter heading and definition in R6-7-101(54) that will change the name of the "Division of Child Support Enforcement" to the "Division of Child Support Services." The Department indicated it planned to request an exemption from the rulemaking moratorium by March 30, 2020, and submit a Notice of Final Expedited Rulemaking to the Council upon approval. However, the Department indicates, in early 2020, the COVID-19 pandemic required the Department to quickly divert all resources to providing pandemic response services. The Department indicates, given that the only item requiring amendment in the last 5YRR involved updating the name of the Division, the Department decided to forego

requesting permission to proceed with a rulemaking request until additional revisions were required.

Proposed Action

In the current report, the Department is proposing to amend numerous rules to align them with statutes, other rules, and current Department practice as indicated in more detail below. The Department states it anticipates submitting a Notice of Final Rulemaking to the Council to address these issues by August 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

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:

As a result of this 5YRR, the Department has determined that there is no substantive change from the Economic, Small Business, and Consumer Impact Statement (EIS) comparison provided in the last 5YRR, which was approved on December 3, 2019. The Department does not anticipate any negative impacts on small businesses or individuals regulated by these rules.

Stakeholders are identified as the Department's Division of Child Support Enforcement, obligors or payors, children's caretakers, individuals involved in a Title IV-D case, and the state.

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 has determined that the benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable except for the following:

- **R6-7-101 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-401 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.

- **R6-7-701 Disbursement:** This rule requires revision because the annual fee is inconsistent with A.R.S. § 25-528, some of the in-text citations to rules in Chapter 7 are expired, and the rule does not align with current Department practice regarding a state lottery prize that has been set off under A.R.S. § 5-575.
- **R6-7-703 Disbursement in Never Assistance Cases on and after January 1, 2003:** This rule is inconsistent with other rules and statutes because R6-7-611, which is used as an in-text citation, has expired.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are consistent with other rules and statutes except for the following:

- **R6-7-101 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-401 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-701 Disbursement:** This rule requires revision because the annual fee is inconsistent with A.R.S. § 25-528, some of the in-text citations to rules in Chapter 7 are expired, and the rule does not align with current Department practice regarding a state lottery prize that has been set off under A.R.S. § 5-575.
- **R6-7-703 Disbursement in Never Assistance Cases on and after January 1, 2003:** This rule is inconsistent with other rules and statutes because R6-7-611, which is used as an in-text citation, has expired.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives except for the following:

- **R6-7-101 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-401 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-701 Disbursement:** This rule requires revision because the annual fee is inconsistent with A.R.S. § 25-528, some of the in-text citations to rules in Chapter 7 are expired, and the rule does not align with current Department practice regarding a state lottery prize that has been set off under A.R.S. § 5-575.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently enforced as written except for the following:

- **R6-7-101 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-401 Definitions:** This rule requires revision to update definitions to align with statutes, rules, and current Department practice.
- **R6-7-701 Disbursement:** This rule requires revision because the annual fee is inconsistent with A.R.S. § 25-528, some of the in-text citations to rules in Chapter 7 are expired, and the rule does not align with current Department practice regarding a state lottery prize that has been set off under A.R.S. § 5-575.

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 Department indicates the rules are not more stringent than the following corresponding federal law: CFR Title 45, Subtitle B, Chapter III.

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?

The Department states A.R.S. § 41-1037 does not apply to these rules because they do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to thirty-four (34) rules in Title 6, Chapter 7, Articles 1, 4, 6 and 7 regarding Child Support Enforcement. Specifically, the Articles relate to the following: Article 1 - General Provisions; Article 4 - Passport Denial; Article 6 - Title IV-D Distribution; Article 7 - Title IV-D Disbursement. The Department is proposing to amend five (5) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement as outlined above. The Department intends to submit a Notice of Final Rulemaking to the Council by August 2025.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Vacant
Director

August 26, 2024

Ms. Jessica Klein
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Klein:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 7, Child Support Enforcement.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Hiroko Flores, Deputy Rules Administrator, at (480) 487-7694 or hflores@azdes.gov.

Sincerely,

Nicole Davis
General Counsel/Chief Governance Officer

Attachments

Department of Economic Security

Title 6, Chapter 7

Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 25-503, 25-504, 25-510, 25-522, and 46-441

2. Analysis of rules:

Rule	Analysis	
R6-7-101	Title:	Definitions
	Objective:	The objective of this rule is to define the terms in this Chapter and promote a uniform understanding of terms used by the Department's Division of Child Support Enforcement.

- Is this rule effective in meeting the objective? **Yes** ☐ **No** ☑
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No** ☑
- Is this rule enforced as written? **Yes** ☐ **No** ☑
- Is this rule clear, concise, and understandable? **Yes** ☐ **No** ☑

Explanation: This rule requires revision to update definitions to align with statutes, rules, and current Department practice.

Rule	Analysis	
R6-7-102	Title:	Interest on Support and Related Payments
	Objective:	The objective of this rule is to explain that support and related payments retained by the Clearinghouse for disbursement will not accrue interest.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐

- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-103 Title: Payment Handling Fee

Objective: The objective of this rule is to prescribe the monthly payment handling fee as described in A.R.S. § 25-510(D).

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-401 Title: Definitions

Objective: The objective of this rule is to define the terms in Chapter 7, Article 4, and promote a uniform understanding of terms used by the Department's Division of Child Support Enforcement regarding passport denial.

- Is this rule effective in meeting the objective? **Yes** ☐ **No** ☑
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No** ☑
- Is this rule enforced as written? **Yes** ☐ **No** ☑
- Is this rule clear, concise, and understandable? **Yes** ☐ **No** ☑

Explanation: This rule requires revision to update definitions to align with statutes, rules, and current Department practice.

Rule **Analysis**

R6-7-402 Title: Certification and Criteria

Objective: The objective of this rule is to identify which Title IV-D cases with an arrearage the Department's Division of Child Support Enforcement shall or shall not submit and certify for passport denial and when the Department's Division of Child Support

Enforcement shall refer a case to the federal Office of Child Support Enforcement (OCSE) for passport denial and federal income tax refund offset, as well as federal administrative offset under federal statute.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-403 Title: Notice

Objective: The objective of this rule is to explain how the Department's Division of Child Support Enforcement provides written notice to an obligor when the obligor has a support arrearage and has been referred for passport denial.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-404 Title: Administrative Review

Objective: The objective of this rule is to explain the administrative review process for passport denial by the Department's Division of Child Support Enforcement.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule	Analysis	
R6-7-405	Title:	Withdrawal of Certification for Passport Denial
	Objective:	The objective of this rule is to explain when the Department's Division of Child Support Enforcement shall notify OCSE to withdraw certification for passport denial for an obligor.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule	Analysis	
R6-7-406	Title:	Appeal from Administrative Review
	Objective:	The objective of this rule is to explain that a determination made by the Department's Division of Child Support Enforcement under this Article is subject to judicial review.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule	Analysis	
R6-7-601	Title:	Distribution
	Objective:	The objective of this rule is to describe the process for the distribution of money collected in a Title IV-D case.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐

- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-602 Title: Receipt and Use of Foreign Currency or Other Foreign Payment

Objective: The objective of this rule is to describe the process the Department's Division of Child Support Enforcement shall take if payments from an obligor or payor are received in a foreign currency.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-603 Title: Allocation of Monies Received from Federal Income Tax Refund Offset to Arrearages

Objective: The objective of this rule is to describe how the Department's Division of Child Support Enforcement allocates money received from an obligor's federal income tax refund offset to multiple obligees when the amount does not satisfy the total arrearages for all cases submitted by the Department's Division of Child Support Enforcement to OCSE for payment owed by an obligor.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-604 Title: Allocation of Other Than Internal Revenue Service Payments to Multiple Obligees

Objective: The objective of this rule is to describe how the Department's Division of Child Support Enforcement allocates money received from a source other than through an income withholding order that is also undesignated to a case or obligee and does not satisfy the total current support or arrearages owed by one obligor to multiple obligees.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-605 Title: Distribution of Monies Received from Federal Income Tax Refund Offset to Arrearages

Objective: The objective of this rule is to explain that the Department's Division of Child Support Enforcement shall refund to an obligor any money received by the Department's Division of Child Support Enforcement that is greater than the total arrearages owed for all cases submitted when received from the Internal Revenue Service on behalf of an obligor's federal income tax refund offset.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-606 Title: Distribution of Futures

Objective: The objective of this rule is to explain that the Department's Division of Child Support Enforcement shall apply amounts in excess of the total current obligations due while support is still accruing ("futures") as described in 45 CFR 302.51(b).

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-607 Title: Distribution of Prepaid Support

Objective: The objective of this rule is to explain how and when the Department's Division of Child Support Enforcement treats payments as prepaid support and when the Department's Division of Child Support Enforcement shall release prepaid support for distribution.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-608 Title: Distribution in Title IV-E Cases

Objective: The objective of this rule is to explain how the Department's Division of Child Support Enforcement handles the retention and distribution of funds in a current or former Title IV-E case.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐

- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-609 Title: Distribution in Current Assistance Cases with a Child Exempt from Assignment

Objective: The objective of this rule is to explain how the Department's Division of Child Support Enforcement distributes current support in a current assistance case, as defined in R6-7-101, when a child is determined to be a Child Not on Grant and ineligible for cash assistance due to the receipt of Social Security income and whose support, as defined in R6-7-101, is exempt from assignment under A.R.S. § 46-407.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-610 Title: Distribution of Cash Medical Support in Title XIX Cases

Objective: The objective of this rule is to describe the distribution of cash medical support in Arizona Health Care Cost Containment System (AHCCCS) (Title XIX) cases where medical support is assigned to the state.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-701 Title: Disbursement

Objective: The objective of this rule is to explain the process for the issuance of support and related payments that the Department's Division of Child Support Enforcement receives in a Title IV-D case.

- Is this rule effective in meeting the objective? **Yes** ☐ **No** ☑
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No** ☑
- Is this rule enforced as written? **Yes** ☐ **No** ☑
- Is this rule clear, concise, and understandable? **Yes** ☐ **No** ☑

Explanation: This rule requires revision because the annual fee is inconsistent with A.R.S. § 25-528, some of the in-text citations to rules in Chapter 7 are expired, and the rule does not align with current Department practice regarding a state lottery prize that has been set off under A.R.S. § 5-575.

Rule **Analysis**

R6-7-702 Title: Disbursement in Never Assistance Cases through December 31, 2002

Objective: The objective of this rule is to explain the order in which the Department's Division of Child Support Enforcement disburses support in Title IV-D cases in which a family never received cash assistance, but received services under Title IV-D or Title XIX of the Social Security Act on or before December 31, 2002.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-703 Title: Disbursement in Never Assistance Cases on and after January 1, 2003

Objective: The objective of this rule is to explain the order in which the Department's Division of Child Support Enforcement disburses support in Title IV-D cases in which a family never received cash assistance, but received services under Title IV-D or Title XIX of the Social Security Act on and after October 1, 2009.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No** ☑
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☐ **No** ☑

Explanation: This rule is inconsistent with other rules and statutes because R6-7-611, which is used as an in-text citation, has expired.

Rule **Analysis**

R6-7-704 Title: Disbursement in Current Assistance Cases through December 31, 2002

Objective: The objective of this rule is to specify the order in which the Department's Division of Child Support Enforcement disburses support and related payments from federal income tax refund offsets collected for an Arizona Title IV-D current assistance case on or before December 31, 2002.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-705 Title: Disbursement in Current Assistance Cases on and after January 1, 2003

Objective: The objective of this rule is to specify the order in which the Department's Division of Child Support Enforcement disburses support and related payments from federal income tax refund offsets collected for an Arizona Title IV-D current assistance case on or before October 1, 2009.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-706 Title: Disbursement in Current Assistance Cases with a Child Exempt from Assignment

Objective: The objective of this rule is to describe the process the Department's Division of Child Support Enforcement uses to handle the disbursement of support when a child on a court order is not on a grant and the support for that child is not assigned to the state.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-707 Title: Disbursement Under Federal Law from October 1, 1997 through September 30, 2000 for Former Assistance Cases

Objective: The objective of this rule is to specify the order in which the

Department's Division of Child Support Enforcement disburses support from federal income tax refund offsets in a former cash assistance case from October 1, 1997 through September 30, 2000.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-708 Title: Disbursement Under Federal Law from October 1, 2000 through December 31, 2002 for Former Assistance Cases

Objective: The objective of this rule is to specify the order in which the Department's Division of Child Support Enforcement disburses support from federal income tax refund offsets in a former cash assistance case from October 1, 2000 through December 31, 2002.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-709 Title: Disbursement Under Federal Law on and after January 1, 2003 for Former Assistance Cases

Objective: The objective of this rule is to specify the order in which the Department's Division of Child Support Enforcement disburses support from federal income tax refund offsets in a former cash assistance case on and after January 1, 2003.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐

- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-710 Title: Disbursement of Federal Income Tax Refund Offsets Under Federal Law from October 1, 1997 through September 30, 2000

Objective: The objective of this rule is to explain the order in which the Department's Division of Child Support Enforcement shall disburse support collected through federal income offsets in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664 from October 1, 1997 through September 30, 2000.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-711 Title: Disbursement of Federal Income Tax Refund Offsets Under Federal Law on and after October 1, 2000

Objective: The objective of this rule is to explain the order in which the Department's Division of Child Support Enforcement shall disburse arrearages collected through federal income offsets on and after October 1, 2000, and the retention of conditionally assigned arrearages to reimburse the state and federal governments for unreimbursed cash assistance paid to an assistance unit.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐

- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-712 Title: Caretaker Disbursement

Objective: The objective of this rule is to explain how support and related payments are disbursed to a caretaker who has physical custody of a child and is not the child's parent.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-713 Title: Past Support Judgments

Objective: The objective of this rule is to describe the process for the collection and disbursement of support when a court or administrative entity orders past support that covers a period in which the obligee was on cash assistance and states that a past support judgment ordered on or after September 26, 2008, does not accrue interest.

- Is this rule effective in meeting the objective? **Yes** ☑ **No**☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No**☐
- Is this rule enforced as written? **Yes** ☑ **No**☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No**☐

Rule **Analysis**

R6-7-714 Title: Interest on Arrearages

Objective: The objective of this rule is to explain how the Department's Division of Child Support Enforcement allocates the amount

of interest on permanently assigned, temporarily assigned, never assigned, and unassigned arrearages.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

Rule **Analysis**

R6-7-715 Title: Unassigned Arrearages

Objective: The objective of this rule is to describe how, when, and the order in which the Department's Division of Child Support Enforcement unassigns arrearages.

- Is this rule effective in meeting the objective? **Yes** ☑ **No** ☐
- Is this rule consistent with other rules and statutes? **Yes** ☑ **No** ☐
- Is this rule enforced as written? **Yes** ☑ **No** ☐
- Is this rule clear, concise, and understandable? **Yes** ☑ **No** ☐

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3. Has the Department received written criticisms of the rules within the last five years?

Yes ☐ **No** ☑

4. Economic, small business, and consumer impact comparison:

There is no substantive change from the Economic, Small Business, and Consumer Impact Statement (EIS) comparison provided in the last Five-Year Review Report, which was approved by the Governor's Regulatory Review Council (GRRC) on December 3, 2019.

The Department's self-service Payment Gateway allows obligors to make a child support payment online. In SFY 2024, the Payment Gateway processed 77,040 online payments made by obligors for a total distribution of over $30 million to obligees and their cases.

The Department's TouchPay services allow obligors to make child support payments at local Division of Child Support Services offices and other locations using cash, credit or debit cards, and checks without waiting in line to speak to a staff member. In SFY 2024, 16,151 payments were processed by TouchPay for a total distribution of over $5 million to obligees and their cases.

Additional child support payments were received by the Department through various other payment methods, such as wage garnishment or child support withholding order for a total distribution of over $401 million to obligees and their cases.

Under A.R.S. § 25-510(D), the Department receives a monthly fee for handling support and maintenance payments, known as the Clearinghouse Payment Handling Fee. The Clearinghouse Payment Handling Fee is $8.00 per month. In SFY 2024, the Department collected an average of $1 million per month in Clearinghouse Payment Handling Fees.

5. Has the agency received any business competitiveness analyses of the rules?

Yes ☐ No ☑

6. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes ☐ No ☑

In the previous Five-Year Review Report approved by the Governor's Regulatory Review Council (GRRC) on December 3, 2019, the Department planned to submit a moratorium exception request for Title 6, Chapter 7 to the Governor's Office by March 30, 2020, so that the Department could update references to Division of Child Support Enforcement to Division of Child Support Services in a Notice of Final Expedited Rulemaking. In early 2020, the COVID-19 Pandemic required the Department to quickly divert all resources to providing pandemic response services. Given that the only item requiring amendment in the last Five-Year Review Report for Chapter 7 involved updating the name of the Division, the Department decided to forego requesting permission to proceed with a rulemaking request until additional revisions were required.

7. 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 benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules. The Department does not anticipate any negative impacts on small businesses or individuals regulated by these rules.

8. Are the rules more stringent than corresponding federal laws?

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 the federal law(s)?

Yes ☐ **No** ☑

CFR Title 45, Subtitle B, Chapter III

The rules are not more stringent than corresponding federal laws.

9. 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 Department has determined that A.R.S. § 41-1037 does not apply to these rules because they do not require the issuance of a permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to amend some of the rules in 6 A.A.C. 7 to address the issues identified in Section 2 of this Five-Year Review Report. The Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2025.

Arizona Administrative CODE

6 A.A.C. 7 Supp. 19-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2019 through December 31, 2019

Title 6

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 6. ECONOMIC SECURITY

CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY - CHILD SUPPORT ENFORCEMENT

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.

Questions about these rules? Contact:

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The release of this Chapter in Supp. 19-4 replaces Supp. 17-1, 1-11 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

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. 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, 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

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, managing rules editor, assisted with the editing of this chapter.

TITLE 6. ECONOMIC SECURITY

CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY - CHILD SUPPORT ENFORCEMENT

Editor's Note: New 6 A.A.C. 7 made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R6-7-101 through R6-7-102, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

ARTICLE 2. RESERVED

ARTICLE 3. RESERVED

ARTICLE 4. PASSPORT DENIAL

Article 4, consisting of R6-7-401 through R6-7-406, made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

ARTICLE 5. RESERVED

ARTICLE 6. TITLE IV-D DISTRIBUTION

Article 6, consisting of R6-7-601 through R6-7-609, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

ARTICLE 7. TITLE IV-D DISBURSEMENT

Article 7, consisting of R6-7-701 through R6-7-716, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

ARTICLE 8. EXPIRED

Article 8, consisting of R6-7-801, expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

Article 8, consisting of R6-7-801, made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).

CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY - CHILD SUPPORT ENFORCEMENT

ARTICLE 1. GENERAL PROVISIONS

R6-7-101. Definitions

The following definitions apply in this Chapter unless otherwise provided in a specific Article of this Chapter:

1. "Allocation" means the prorated division of collections.
2. "Annual fee" means the amount owed by the recipient of services when the Title IV-D Agency has collected $500.00 of support in a federal fiscal year.
3. "Arrearages" means unpaid amounts of support owed.
4. "Assistance unit" means a group of persons whose needs, income, resources, and other circumstances are considered as a whole for the purpose of determining eligibility and benefit amount for cash assistance.
5. *"Business day" means a day on which state offices are open for regular business.* A.R.S. § 46-408.
6. "Caretaker" means an individual other than a parent in a Title IV-D case who has physical custody of a child and may have the right to support of that child under A.R.S. § 46-444.
7. "Cash assistance" means temporary payments for needy families paid to a recipient for the purpose of meeting basic living expenses, as described by the Department at 6 A.A.C. 12.
8. "Cash medical support" means the court ordered monthly amount to be paid as an alternative when medical insurance is not accessible or available at a reasonable cost in accordance with A.R.S. § 25-320.
9. "Child Not on Grant" means a child who:
   a. Resides with an assistance unit receiving cash assistance,
   b. Is not eligible for cash assistance due to the receipt of Social Security income, and
   c. Is exempt from the assignment under A.R.S. § 46-407.
10. "Child Support Case Registry" or "Registry" means certain automated records of all Title IV-D cases, and all other cases in which a support order is established, modified, or registered in Arizona on or after October 1, 1998.
11. "Conditionally assigned arrearages" are arrearages that:
    a. Do not exceed the total cumulative amount of unreimbursed cash assistance paid to a family as of the date the family stops receiving cash assistance;
    b. Were temporarily assigned arrearages; and
    c. Became conditionally assigned on the date that the family stopped receiving cash assistance or October 1, 2000, whichever date is later.
12. "Current assistance case" means a Title IV-D case in which an assistance unit is currently receiving cash assistance.
13. "Current support" means the monthly amount of money ordered by a court or an administrative entity for the support of a child, spouse, or former spouse and may include cash medical support.
14. "Department" means the Department of Economic Security.
15. "Disbursement" means the payment of monies to an obligee or other authorized recipient.
16. "Distribution" means application of support and related collections to one or more specific obligations or debts.
17. "F.A.A." means the Family Assistance Administration, the entity within the Department responsible for administering the Department's Cash Assistance Program.
18. "Federal fiscal year" means the 12 consecutive months beginning October 1 and ending September 30 for which the Office of Child Support Enforcement in the United States Department of Health and Human Services plans the use of its funds.
19. "Federal income tax refund offset" means the intercept of Internal Revenue Service income tax refunds to pay support as provided in 26 U.S.C. 6402 and 42 U.S.C. 664.
20. "Fees and costs" means amounts ordered by the court or administrative entity or agreed to be paid to the Title IV-D Agency for genetic testing, service of process, or other expenses.
21. "Former assistance case" means a Title IV-D case in which an assistance unit formerly received cash assistance and is no longer receiving cash assistance.
22. "Futures" means an amount of support received by the Title IV-D Agency, excluding any federal or state income tax refund offset, which when received exceeds the amount of current support owed in a Title IV-D case with no arrearages or other unpaid obligations as stated in 45 CFR 302.51(b). Futures do not include prepaid support.
23. "Handling fee" means the monthly charge prescribed in A.R.S. § 25-510, which is set by the Department director, and is payable to the Title IV-D Agency's Clearinghouse.
24. "Income withholding order" means an order that directs an obligor's employer, payor, or the obligor to withhold monies from the obligor's income.
25. *"Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under* A.R.S. Title 25, Chapter 9 *or a law or procedure substantially similar to* A.R.S. Title 25, Chapter 9. A.R.S. § 25-1202.
26. "Injured spouse claim" means a written request from the spouse of an obligor stating that the spouse has an interest in an income tax refund based on a joint federal income tax return.
27. "IRS tax reversal" means a rescission by the Internal Revenue Service of a federal income tax refund offset that was previously received by the Title IV-D Agency.
28. *"Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.* A.R.S. § 25-1202.
29. "Medical assistance" means benefits received from a state agency under Title XIX of the Social Security Act.
30. "Medical support judgment" means a judgment for the costs of medical insurance coverage or uncovered medical expenses of the child.
31. "Never assigned arrearages" means arrearages that:
    a. Accrue in a never assistance case, or in a former assistance case after an assistance unit's most recent period of cash assistance ends; and
    b. Are not assigned.
32. "Never assistance case" means a Title IV-D case in which a family never received cash assistance, but could be receiving or has received medical assistance under Title XIX of the Social Security Act.
33. "Nonobligated spouse" means the spouse who filed an Arizona state income tax return jointly with an obligor.
34. "Non-periodic payment" means a non-recurring amount or an amount that is not paid at regular intervals.
35. *"Obligee" means a person or agency entitled to receive support.* A.R.S. § 25-500.
36. *"Obligor" means a person obligated to pay support.* A.R.S. § 25-500.
37. "OCSE" means the Office of Child Support Enforcement in the United States Department of Health and Human Services.
38. "Order" means a legal directive issued by an officer or entity legally authorized to issue orders.

39. "Past support" means the amount of support reduced to a written judgment for the care and support of a child for the period before a current child support order is established.
40. "Permanently assigned arrearages" means arrearages that do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit at the time the assistance unit leaves assistance, and
    a. Accrued before the family received assistance and were assigned to the state before October 1, 1997; or
    b. Accrue during any period in which the assistance unit received cash assistance and were assigned to the state on or after October 1, 1997.
41. "Pregnancy and childbirth expenses" means the costs of pregnancy and childbirth, which may be reduced to a written judgment under A.R.S. § 25-809.
42. "Pregnancy and childbirth judgment" means a final court order for the costs of pregnancy and childbirth.
43. "Prepaid support" means payments for monthly support that the obligor or the obligor's agent designate in writing as payments for support in future months, even in cases with arrearages.
44. "Related payments" means monies other than support received under an order or agreement.
45. "*Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under* A.R.S. Title 25, Chapter 9 *or a law substantially similar to* A.R.S. Title 25, Chapter 9. A.R.S. § 25-1202.
46. "Spousal maintenance" or "spousal support" means an amount of money ordered under A.R.S. § 25-319 or a similar law of another state, for the support or maintenance of a spouse or former spouse.
47. "State" has the meaning in A.R.S. § 25-1202(22).
48. *"Support" means the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance. In a Title IV-D case, support includes spousal maintenance* or spousal support *that is included in the same order that directs child support.* A.R.S. § 25-500.
49. "Support Payment Clearinghouse" or "Clearinghouse" means the state disbursement unit for the Title IV-D Agency established under A.R.S. § 46-441 to collect and disburse all payments under support orders or agreements.
50. "Temporarily assigned arrearages"
    a. Means arrearages that:
        i. Do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the unit stops receiving cash assistance;
        ii. Accrue before any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997; and
        iii. Are not permanently assigned arrearages; and
    b. The temporary assignment is no longer effective on October 1, 2000, or when the assistance unit stops receiving cash assistance, whichever is later.
    c. Effective on and after October 1, 2009, no new temporary assignments of unpaid support begin.
51. *"Temporary assistance for needy families"* (TANF) *means assistance granted under § 403 of Title IV of the Social Security Act, as it exists after August 21, 1996.* A.R.S. § 46-101.
52. "Title IV-A" means Title IV-A of the Social Security Act, 42 U.S.C. 601 et seq.
53. "Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.
54. "Title IV-D Agency" means the Division of Child Support Enforcement and all of its contracting entities that administer Title IV-D services.
55. "Title IV-E" means Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.
56. "Title XIX" means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
57. "Title XIX Agency" means the Arizona Health Care Cost Containment System (AHCCCS).
58. *"Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.* A.R.S. § 25-1202.
59. "UIFSA" means the Uniform Interstate Family Support Act, A.R.S. §§ 25-1201 et seq.
60. "Unassigned arrearages" means previously permanently assigned and temporarily assigned arrearages that exceed the total cumulative amount of unreimbursed cash assistance paid to a family as of the date the family stops receiving cash assistance and includes both unassigned during-assistance arrearages and unassigned pre-assistance arrearages.
61. "Unassigned during-assistance arrearages" means all previously permanently assigned arrearages that:
    a. Exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the assistance unit stops receiving cash assistance; and
    b. Accrue during any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997.
62. "Unassigned pre-assistance arrearages" means all previously temporarily assigned arrearages that:
    a. Exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the assistance unit stops receiving cash assistance; and
    b. Accrue before any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997 but before October 1, 2009.
63. "Unreimbursed cash assistance" means the total, cumulative amount of cash assistance for which the state of Arizona has not received reimbursement.
64. "Voluntary payment" means monies received by the Title IV-D Agency on behalf of a child for whom no order for support is established.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1138, effective July 1, 2010 (Supp. 10-2).

R6-7-102. Interest on Support and Related Payments

Interest shall not accrue on support and related payments retained by the Clearinghouse for disbursement and the Clearinghouse shall not pay interest on these monies unless state or federal statutes require payment of interest.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-103. Payment Handling Fee

Under A.R.S. § 25-510, the monthly payment handling fee shall be $8.00.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1138, effective July 1, 2010 (Supp. 10-2). Amended by final rulemaking at 26 A.A.R. 15, effective February 12, 2020 (Supp. 19-4).

ARTICLE 2. RESERVED

ARTICLE 3. RESERVED

ARTICLE 4. PASSPORT DENIAL

R6-7-401. Definitions

The following definitions apply in this Article unless otherwise provided in a specific Section of this Article:

1. "Certification" means to furnish OCSE with the name, identifying information, and amount of the arrearage owed by an individual determined delinquent in fulfilling a child support obligation.
2. "Federal administrative offset" means the interception of certain federal payments in order to collect past-due child support. Based on the Debt Collection Improvement Act (DCIA) of 1996, the process is managed by the Federal Office of Child Support Enforcement (OCSE), through the Financial Management Service (FMS) of the Department of the Treasury, in conjunction with the Federal Tax Refund Offset Program.
3. "Passport denial" means the certification process followed by the Title IV-D Agency and the United States Secretary of State, to refuse to issue a passport or to revoke, restrict, or limit a passport that was previously issued, because the obligor in a Title IV-D case has an arrearage in an amount that qualifies for certification under federal statute.
4. "Secretary" means the United States Secretary of State.
5. "Title IV-D case" means a proceeding for support managed by the Title IV-D Agency as required by Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-402. Certification and Criteria

A. The Title IV-D Agency shall:
1. Submit and certify to OCSE for passport denial any Title IV-D case with an arrearage that qualifies for certification under federal statute; and
2. Refer the case to OCSE for federal income tax refund offset and federal administrative offset under federal statute.

B. The Title IV-D Agency shall submit and certify a case for passport denial if the case meets both of the following criteria:
1. A support obligation has been established by a court or an administrative order; and
2. The arrearage is in an amount that qualifies for certification under federal statute.

C. The Title IV-D Agency shall not submit the following cases for passport denial:
1. Interstate cases in which the obligee receives temporary assistance for needy families and the state of Arizona does not have an assignment of rights.
2. Cases in which federal law precludes action.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-403. Notice

A. The Title IV-D Agency shall provide written notice to an obligor that the obligor has a support arrearage in an amount that qualifies for certification under federal statute, and that the obligor has been referred for federal administrative offset, federal income tax refund offset, and passport denial.

B. The Title IV-D Agency shall send the notice to an obligor by first class mail. The mailing of the notice to the obligor's last known address of record with Title IV-D Agency constitutes proper and sufficient notice.

C. The notice shall inform the obligor of the right to contest the enforcement action.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-404. Administrative Review

A. An obligor may file a written request for administrative review by the Title IV-D Agency within 30 business days from the date on the notice mailed in accordance with R6-7-403.

B. An obligor has the burden of proof regarding each issue raised in an administrative review.

C. The issues in an administrative review are limited to:
1. Whether there has been a mistake regarding the identity of the obligor; and
2. The amount of the obligor's arrearage, if any.

D. If an obligor alleges that there has been a mistake regarding the identity of the obligor, the Title IV-D Agency shall issue a final written determination by first class mail to all parties within two business days after receipt of the request for administrative review.

E. For all circumstances other than a mistake regarding the identity of the obligor, the Title IV-D Agency shall issue a final written determination by first class mail to all parties within 45 business days after receipt of the request for administrative review, or if additional information is required and provided, 45 business days after receipt of this information.

F. In an interstate case, only the certifying state has the authority to withdraw an obligor from the passport denial process.

G. If an obligor does not request an administrative review within 30 business days, the Title IV-D Agency's certification for purposes of passport denial remains in effect.

H. If an obligor requests an administrative review within 30 business days and meets the requirements for withdrawal of certification for passport denial in R6-7-405, the Title IV-D Agency shall notify OCSE to withdraw certification for passport denial in accordance with OCSE requirements.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-405. Withdrawal of Certification for Passport Denial

A. The Title IV-D Agency shall notify OCSE to withdraw certification for passport denial for an obligor if one or more of the following applies:
1. The Title IV-D Agency makes a final determination during an administrative review that:
   a. The case does not meet the criteria for passport denial in R6-7-402; or
   b. There has been a mistake regarding the identity of the obligor;
2. The obligor has paid the arrearage down to:

a. An amount less than the amount that qualifies for certification under federal statute, and has entered into a payment agreement with the Title IV-D Agency; or
b. Zero; or
c. An amount agreed to by the Title IV-D Agency, if the arrearage is owed to both the state and the obligee, provided the obligor agrees to and complies with any other terms required by the Title IV-D Agency, and the provisions of R6-7-405(B).

B. The Title IV-D Agency shall also notify OCSE to withdraw certification for passport denial for an obligor if all of the following apply:
1. The obligee agrees to accept partial payment of the total arrearages owed by the obligor to the obligee, even though the payment does not comply with the requirements of R6-7-405(A)(2) to pay arrearages down to zero or an amount less than that which qualifies for certification under federal statute;
2. The obligor and obligee agree to the amount of the partial payment in writing, and the document is signed by both parties and submitted to the Title IV-D Agency;
3. The Title IV-D Agency advises the obligee that the Title IV-D Agency may not have the opportunity to request passport denial for another 10 years;
4. The obligee provides the Title IV-D Agency with a signed, notarized statement acknowledging receipt of the advisement in subsection (3) before the notification to OCSE to withdraw certification for passport denial;
5. The obligor enters into a payment agreement with the Title IV-D Agency for the remainder of the arrearages owed; and
6. The Title IV-D Agency consents to the agreement between the obligor and the obligee.

C. The Title IV-D Agency shall notify OCSE by facsimile, computer, or other electronic or non-electronic means to withdraw certification for passport denial, in accordance with OCSE requirements.

D. If an obligor fails to comply with the terms of any payment agreement with the Title IV-D Agency, and the arrearage qualifies for certification under federal statute, the Title IV-D Agency shall re-certify the obligor to OCSE for passport denial.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

R6-7-406. Appeal from Administrative Review
A Title IV-D Agency determination made under this Article is subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6 (Judicial Review of Administrative Decisions), or other applicable law.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

ARTICLE 5. RESERVED

ARTICLE 6. TITLE IV-D DISTRIBUTION

R6-7-601. Distribution

A. The Title IV-D Agency shall distribute monies collected in a Title IV-D case in accordance with state and federal law and the provisions of this Article in the following sequence to:
1. Current child support;
2. Current spousal maintenance;
3. Current cash medical support;
4. Child support judgments for arrearage or past support, and the applicable corresponding interest;
5. Spousal maintenance judgments for arrearage or past support and the applicable corresponding interest;
6. Pregnancy and childbirth judgments and the corresponding interest;
7. Cash medical support judgments and the corresponding interest;
8. Judgments for uncovered medical costs and the corresponding interest;
9. Child support arrearages not reduced to a written judgment and the corresponding interest;
10. Spousal maintenance arrearages not reduced to a written judgment and the corresponding interest;
11. Cash medical support arrearages not reduced to a written judgment, and the corresponding interest;
12. Current month's handling fee;
13. Handling fees owed to the Support Payment Clearinghouse;
14. IRS tax reversals;
15. Other fees or costs; and
16. Futures.

B. Arrearage payments distributed in a Title IV-D case are applied first to the principal and then to the interest that accrued on that principal in the following order:
1. The oldest written judgment's principal and interest and then to each successive written judgment's principal and interest.
2. Arrearages not reduced to a written judgment and the corresponding interest.

C. The Title IV-D Agency shall credit amounts received as support from or on behalf of the obligor as the required support obligation for the month in which they are received unless they are submitted by an employer. Payments submitted by an employer as the result of an income withholding order are considered received in the month in which the income was withheld by the employer. The date of receipt for income withholding order payments is the last day of the pay period from which the payment is withheld.

D. A voluntary payment received in a cash assistance case shall be retained by the Title IV-D Agency and shared with the federal government. Any monies received in excess of cash assistance owed to the state and federal government shall be paid to the obligee.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

R6-7-602. Receipt and Use of Foreign Currency or Other Foreign Payment

A. An obligor acting under an order for support issued by a court or an administrative entity in the U.S. shall pay support and other obligations in U.S. dollars. If the obligor or payor pays in a foreign currency, check, draft, or other negotiable form of payment, the Title IV-D Agency shall give the obligor credit for the U.S. dollar equivalent of the foreign currency, check, draft, or other negotiable form of payment tendered. The U.S. dollar equivalent is based on the conversion rate used by the state's bank on the date the payment is received.

B. If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment under a U.S. support order and the equivalent value in U.S. dollars is less than the ordered amount, the difference between the ordered

amount and the amount tendered constitutes an unpaid amount owed.

C. If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment under a U.S. support order, and the equivalent value in U.S. dollars is more than the ordered amount, the Title IV-D Agency shall distribute the excess amount according to R6-7-601(A).

D. If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment as required under a foreign support order, the Title IV-D Agency shall give the obligor credit for the amount tendered regardless of the conversion value in U.S. dollars.

E. The Clearinghouse shall disburse support and related payments it receives in U.S. dollars.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-603. Allocation of Monies Received from Federal Income Tax Refund Offset to Arrearages
If monies received from a federal income tax refund offset do not satisfy the total arrearages for all cases submitted by the Title IV-D Agency to OCSE for payment owed by an obligor to multiple obligees, the Title IV-D Agency shall make a proportionate allocation to each obligee whose case was submitted for federal income tax refund offset. The Title IV-D Agency shall determine the proportionate share by dividing the total arrearages owed to each obligee by the total arrearages owed by the obligor and multiplying the resulting percentage by the amount of the federal income tax refund offset.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-604. Allocation of Other Than Internal Revenue Service Payments to Multiple Obligees

A. If the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee and it does not satisfy the total current support owed by one obligor to multiple obligees, the Title IV-D Agency shall use the following procedure to determine the amount of support allocated to each obligee:
1. Determine the total current support owed by the obligor to all obligees,
2. Divide the current support that the obligor owes to each obligee by the total current support that the obligor owes to all obligees, and
3. Multiply the resulting percentage by the payment.

B. If the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee and it does not satisfy the total arrearages or past support owed by one obligor to multiple obligees, the Title IV-D Agency shall use the following procedure to determine the amount of support allocated to each obligee:
1. Determine the total arrearages owed by the obligor to all obligees,
2. Divide the arrearages that the obligor owes to each obligee by the total arrearages that the obligor owes to all obligees, and
3. Multiply the resulting percentage by the arrearage or past support payment.

C. The Title IV-D Agency shall not use this procedure if:
1. The payment source is an income withholding order and the employer or payor has allocated under A.R.S. §§ 25-504 or 25-505.01;
2. The case is governed by R6-7-715; or
3. The support owed to an obligee was not submitted for the enforcement action that resulted in the collection.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-605. Distribution of Monies Received from Federal Income Tax Refund Offset to Arrearages
If the federal income tax refund offset received from the Internal Revenue Service on behalf of an obligor is greater than the total arrearages owed for all cases submitted for federal income tax refund offset, the Title IV-D Agency shall refund any excess monies to the obligor, unless the obligor agrees in writing that the monies may be applied to other obligations owed.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-606. Distribution of Futures
The Title IV-D Agency shall apply futures as provided in 45 CFR 302.51(b) (Office of the Federal Register, National Archives and Records Administration, October 1, 2004), which is incorporated by reference and on file with the Department. This incorporation by reference does not include any later amendments or editions. The Title IV-D Agency shall also follow the same regulation in never assistance and former assistance cases.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-607. Distribution of Prepaid Support

A. The Title IV-D Agency shall treat payments as prepaid support only if there is no alternative that would allow for prompt payment of support owed to an obligee in a future month.

B. The Title IV-D Agency shall release any prepaid support in the applicable future month for distribution in accordance with R6-7-601(A).

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-608. Distribution in Title IV-E Cases

A. The Department shall retain monies collected in a Title IV-E case for reimbursement of Title IV-E expenditures under A.R.S. § 8-243.02.

B. While a case is current Title IV-E, all support collected shall be disbursed in accordance with 45 CFR 302.52 (Office of the Federal Register, National Archives and Records Administration, October 1, 2004), which is incorporated by reference and on file with the Department. This incorporation by reference does not include any later amendments or editions. If the collection is more than the current monthly support and exceeds the total Title IV-E expenditures, then the Department shall use the collection to pay any arrearages assigned to the state under A.R.S. § 46-407. If arrearages have been paid, the Department shall pay any excess in a current Title IV-E case to the Title IV-E Agency for the benefit of the Title IV-E child.

C. When a case is former Title IV-E and former assistance with arrearages assigned to the state under A.R.S. § 46-407 and A.R.S. § 8-243.02, the Department shall first apply arrearage collections to the arrearages assigned under A.R.S. § 46-407.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-609. Distribution in Current Assistance Cases with a

Child Exempt from Assignment

A. In a current assistance case, when a child is determined to be a Child Not on Grant, the Title IV-D Agency shall distribute current support collected for a Child Not on Grant on or after the end of the month in which the current support is collected. Arrearages that accrue and are collected while the assistance unit is receiving cash assistance shall be distributed on or after the end of the month in which the arrearages are collected.

B. If a child support order for a Child Not on Grant covers children who are not subject to A.R.S. § 46-407(B), the Title IV-D agency shall divide the ordered child support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of the child support collected for the benefit of the Child Not on Grant.

C. Beginning July 1, 2003, for current child support and any child support arrearages that accrue during the period of assistance, the Title IV-D Agency shall distribute the prorated share of child support collected for the benefit of a child who is subject to A.R.S. § 46-292(G) on or after the end of the month in which it is collected.

D. If a child support order for a child subject to A.R.S. § 46-292(G) also covers children who are not subject to A.R.S. § 46-292(G), the Title IV-D Agency shall divide the ordered child support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of the child support collected for the benefit of the child subject to A.R.S. § 46-292(G).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-610. Distribution of Cash Medical Support in Title XIX Cases

A. The Title IV-D Agency shall retain current cash medical support monies for a child receiving Title XIX services under A.R.S. § 46-407 where the recipient of services is an individual to whom court ordered medical support is owed.

B. When a child is receiving Title XIX services, the Title IV-D Agency shall disburse all current cash medical support for that child to the Title XIX Agency in accordance with 45 CFR 302.51 on or after the end of the month in which the current cash medical support is collected. The Title IV-D Agency shall distribute arrearages that accrue and are collected while the child is receiving Title XIX services on or after the end of the month in which the arrearages are collected.

C. When a child is no longer receiving Title XIX services, the Title IV-D Agency shall disburse current cash medical support in accordance with R6-7-701. The Title IV-D Agency shall distribute collections of cash medical support arrears that accrued while the child was receiving Title XIX services in accordance with R6-7-601 to the Title XIX Agency.

D. If a cash medical support order covers children who are not receiving Title XIX services and children who are receiving Title XIX services, the Title IV-D Agency shall divide the ordered cash medical support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of cash medical support for the benefit of the children receiving Title XIX services to the Title XIX Agency and the prorated share of cash medical support for the benefit of the children not receiving Title XIX services to the obligee.

E. When a case is former Title XIX and former assistance with arrearages assigned to the state under A.R.S. § 46-407, the Title IV-D Agency shall first apply arrearage collections to the child and spousal support arrearages assigned under A.R.S. § 46-407.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

R6-7-611. Expired

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

ARTICLE 7. TITLE IV-D DISBURSEMENT

R6-7-701. Disbursement

A. The Title IV-D Agency shall disburse support and related payments that the Title IV-D Agency receives in a Title IV-D case to one or more of the following recipients:

1. An obligee or an agent authorized in writing by an obligee or as determined by law;
2. A Title IV-D agency of another state if the agency submits a request for support establishment or enforcement services and is authorized to receive support under U.I.F.S.A.;
3. The federal government, if Arizona is providing or has provided cash assistance to the assistance unit, or a member of the assistance unit, or if Arizona is providing or has provided Title IV-E foster care maintenance payments, or if the annual $25.00 fee is owed, pursuant to R6-7-611;
4. A state, if the state is providing or has provided cash assistance to the assistance unit that does not exceed the total amount of unreimbursed cash assistance;
5. An obligor, if a refund is due;
6. A bankruptcy trustee;
7. A state or federal agency as authorized by law;
8. A caretaker under Arizona statute and R6-7-712.

B. The Title IV-D Agency shall issue payments due to an obligee at the last known address filed with the Child Support Case Registry or the last address known to F.A.A.

C. If a payment to an obligee is returned to the Title IV-D Agency because it was undeliverable, the Title IV-D Agency shall make a reasonable effort to locate the obligee for the period authorized in A.R.S. § 25-503.

D. If the Title IV-D Agency is unable to locate the obligee by the end of the period authorized in A.R.S. § 25-503, the Title IV-D Agency shall contact the obligor to request oral or written approval to apply the funds to arrearages and any other unpaid obligations owed to the state. If the Title IV-D Agency is unable after a reasonable effort to locate the obligee or obligor, and an arrearage is still owed to the state, the Title IV-D Agency shall apply the payments to the arrearage. Any remaining amounts shall be handled consistent with applicable law.

E. If an obligee requests that the Title IV-D Agency directly deposit support in a financial institution and the financial institution returns those monies because the obligee's account is closed, or the financial institution will not accept the deposit, the Title IV-D Agency shall make a reasonable effort to locate the obligee for the period authorized in A.R.S. § 25-503, after receiving notice that the account is closed or that the financial institution will not accept the deposit.

F. Neither the return of monies to an obligor due to an inability to locate the obligee, nor the application of monies to arrearages or other support-related debts terminates an obligor's obligation ordered by a court or administrative entity.

G. The Title IV-D Agency shall disburse support that the Title IV-D Agency receives for a current assistance case within two

business days of the last day of the month in which the Clearinghouse receives the payment.

H. Except as provided in subsections (G), (I), (J), (K), (L), and (M), the Title IV-D Agency shall disburse support within two business days of receipt by the Clearinghouse unless the Clearinghouse is unable to disburse the support for one or more of the following reasons:

1. The Title IV-D Agency does not have the obligee's current address;
2. The Title IV-D Agency or its payment posting contractor lacks sufficient information to identify the case to which the payment must be applied;
3. An action is pending before the Title IV-D Agency to determine whether:
   a. An administrative income withholding order is enforceable under A.R.S. § 25-505.01, or
   b. A limited income withholding order is enforceable under A.R.S. § 25-505;
4. The payment is for futures that federal law requires the Title IV-D Agency to hold for disbursement in a future month, or for prepaid support;
5. A court or administrative order, bankruptcy stay, or state or federal law requires the Title IV-D Agency to retain support or to use a different disbursement method or time-frame;
6. The Title IV-D Agency lacks information regarding a support order, an agreement, or any other obligation owed to the Department;
7. Support is returned to the Title IV-D Agency or the Clearinghouse due to the obligee's incarceration or because the obligee or only child still covered by the order is deceased;
8. A check received from an obligor or other payor has previously been dishonored, precluding the acceptance of a personal check under A.R.S. § 25-503; or
9. Other circumstances exist that prevent proper and timely disbursement of support through no fault or lack of diligence on the part of the Title IV-D Agency.

I. If a federal income tax refund offset is based on a joint federal income tax return, the Title IV-D Agency shall retain the offset for 180 days after receipt of the refund monies unless the Internal Revenue Service notifies the Title IV-D Agency of the resolution of an injured spouse claim, or until the spouse signs a waiver of any right to claim a portion of the refund. The Title IV-D Agency shall distribute and disburse a federal income tax refund offset that is based on a joint tax return in accordance with R6-7-709, R6-7-710 and R6-7-711. The offset collections do not accrue interest and the Title IV-D Agency shall not pay interest on these monies.

J. *If a* [state income] *tax refund is based on a joint income tax return and the department of economic security receives a written claim from the nonobligated spouse within forty-five days after the notice of a setoff for overdue child support, the setoff only applies to that portion of the refund due to the obligor. The nonobligated spouse shall provide to the department of economic security copies of both the obligated and nonobligated spouse's federal W-2 forms and evidence of estimated tax payments supporting the proportionate share of each spouse's payment of tax. The department of economic security shall retain the amount of the set off refund due to the obligated spouse determined by a proration based on the tax payments of each spouse by estimated tax payment or tax withheld from wages.* A.R.S. § 42-1122(S).

K. The Title IV-D Agency shall distribute and disburse an Arizona income tax refund setoff that is based on a joint income tax return in accordance with R6-7-601. The Title IV-D Agency shall not pay interest on these monies except as provided in A.R.S. §§ 42-1122 and 42-1123.

L. The Title IV-D Agency shall retain a state lottery prize that has been set off under A.R.S. § 5-525 for 30 days after the date on the notice of setoff and right to appeal as prescribed in A.R.S. § 5-525. The Title IV-D Agency shall not pay interest on these monies except as provided in A.R.S. § 5-525.

M. In addition to the reasons for retaining support already stated in this rule, the Title IV-D Agency may retain support for more than two business days if:

1. The amount received exceeds the amount due or owing, but is neither futures nor prepaid support;
2. The obligee's and obligor's financial accounts maintained by the Title IV-D Agency are out of balance;
3. An obligor has multiple cases and, in at least one case, has no known obligation to support a child, or a child covered by the support order is receiving Social Security benefits and A.R.S. § 46-407 applies;
4. A personal or business check received for support in one case exceeds $2,500 and there is no history of checks that exceed $2,500 clearing in that case. In no event shall the Title IV-D Agency retain these monies for more than 10 business days;
5. The Title IV-D Agency has received a notice of a stop payment order on a payment; or
6. The amount to be disbursed in a check is less than $3.00. When the amount held reaches $3.00 or more, the Title IV-D Agency shall disburse the amount.

N. If a support payment received by the Title IV-D Agency exceeds the amount due or owing and is neither futures nor prepaid support, the Title IV-D Agency shall refund the excess to the obligor at the last known address provided to the Child Support Case Registry.

O. If an obligee cannot be located before a case is closed, the Title IV-D Agency shall send any undisbursed amounts owed to the obligee back to the obligor.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

R6-7-702. Disbursement in Never Assistance Cases through December 31, 2002

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for an Arizona never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to fees and costs and unpaid handling fees;
5. Fifth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-703. Disbursement in Never Assistance Cases on and after January 1, 2003

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, and R6-7-611 for the mandatory annual fee effective on and after October 1, 2009, the Title IV-D Agency shall disburse support and related payments collected for an Arizona

never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act as follows:

1. First, to current support;
2. Second, to never assigned arrearages;
3. Third, to the handling fee for the month in which the Title IV-D Agency receives the support and unpaid handling fees;
4. Fourth, to fees and costs;
5. Fifth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

R6-7-704. Disbursement in Current Assistance Cases through December 31, 2002

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for an Arizona Title IV-D current assistance case as follows:

1. First to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to temporarily assigned arrearages;
4. Fourth, to permanently assigned arrearages;
5. Fifth, to unassigned arrearages;
6. Sixth, to fees and costs;
7. Seventh, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-705. Disbursement in Current Assistance Cases on and after January 1, 2003

A. For all recipients who applied for current assistance prior to October 1, 2009 and therefore assigned their rights to support to the state, the Title IV-D Agency shall disburse support and related payments, except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, collected for an Arizona Title IV-D current assistance case as follows:

1. First, to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to temporarily assigned arrearages;
3. Third, to permanently assigned arrearages;
4. Fourth, to unassigned arrearages;
5. Fifth, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
6. Sixth, to fees and costs;
7. Seventh, to futures.

B. For all recipients who applied for current assistance on and after October 1, 2009, the Title IV-D Agency shall disburse support and related payments, except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, collected for an Arizona Title IV-D current assistance case as follows:

1. First, to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to temporarily assigned arrearages which were assigned prior to October 1, 2009;
3. Third, to permanently assigned arrearages;
4. Fourth, to never assigned arrearages;
5. Fifth, to conditionally assigned arrearages based on assignments entered prior to October 1, 2009;
6. Sixth, to unassigned pre-assistance arrearages;
7. Seventh, to unassigned during-assistance arrearages;
8. Eighth, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
9. Ninth, to fees and costs;
10. Tenth, to futures.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

R6-7-706. Disbursement in Current Assistance Cases with a Child Exempt from Assignment

A. The Title IV-D Agency shall disburse the prorated share of support received for a Child Not on Grant to the obligee after the end of the month in which it is received.

B. If the Title IV-D Agency determines that a child is a Child Not on Grant, the unpaid share of support accrues as never assigned arrearages.

C. If a Child Not on Grant is no longer subject to A.R.S. § 46-407(B), and instead is subject to the remaining provisions of A.R.S. §§ 46-407 and 46-408, all previously unpaid arrearages are assigned to the state.

D. While an assistance unit is receiving cash assistance, the Title IV-D Agency shall disburse the prorated share of support received for a child subject to the provisions of A.R.S. § 46-292(G) to the obligee after the end of the month of current assistance.

E. If the Title IV-D Agency determines that a child in an assistance unit is subject to the provisions of A.R.S. § 46-292(G), the unpaid prorated share of support accrues as never assigned arrearages.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-707. Disbursement Under Federal Law from October 1, 1997 through September 30, 2000 for Former Assistance Cases

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments for a former cash assistance case as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to temporarily assigned arrearages;
5. Fifth, to the permanently assigned arrearages;
6. Sixth, to unassigned arrearages;
7. Seventh, to unpaid handling fees;
8. Eighth, to fees and costs;
9. Ninth, to futures as provided in R6-7-606.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-708. Disbursement Under Federal Law from October 1, 2000 through December 31, 2002 for Former Assistance

Cases
Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments for a former cash assistance case as follows:
1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to unassigned pre-assistance arrearages;
5. Fifth, to conditionally assigned arrearages;
6. Sixth, to permanently assigned arrearages;
7. Seventh, to unassigned during-assistance arrearages;
8. Eighth, to fees and costs;
9. Ninth, to futures.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-709. Disbursement Under Federal Law on and after January 1, 2003 for Former Assistance Cases
Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for a former assistance case, as follows:
1. First, to current support;
2. Second, to never assigned arrearages;
3. Third, to unassigned pre-assistance arrearages;
4. Fourth, to conditionally assigned arrearages;
5. Fifth, to permanently assigned arrearages;
6. Sixth, to unassigned during-assistance arrearages;
7. Seventh, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
8. Eighth, to fees and costs;
9. Ninth, to futures.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-710. Disbursement of Federal Income Tax Refund Offsets Under Federal Law from October 1, 1997 through September 30, 2000
The Title IV-D Agency shall disburse support collected through federal income tax refund offset in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664, as follows:
1. First, to temporarily assigned arrearages;
2. Second, to permanently assigned arrearages; and
3. Third, to never assigned and unassigned arrearages.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-711. Disbursement of Federal Income Tax Refund Offsets Under Federal Law on and after October 1, 2000
A. The Title IV-D Agency shall disburse arrearages collected through federal income tax refund offset in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664, as follows:
1. First, to temporarily or conditionally assigned arrearages owed to the state of Arizona;
2. Second, to permanently assigned arrearages; and
3. Third, to never assigned and unassigned arrearages.

B. The Title IV-D Agency shall retain conditionally assigned arrearages collected through the federal income tax refund offset to reimburse the state and federal governments for unreimbursed cash assistance paid to the assistance unit. The Title IV-D Agency shall pay conditionally assigned arrearages, collected from any source other than a federal income tax refund offset, to the obligee.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-712. Caretaker Disbursement
If an obligee with a child support case becomes the caretaker of a child who is not the obligee's child, the Title IV-D Agency shall disburse support and related payments owed to the obligee in accordance with R6-7-703, R6-7-704, R6-7-707, and R6-7-708, as applicable. The support and related payments for the assistance unit shall be disbursed in accordance with R6-7-705.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-713. Past Support Judgments
If a court or an administrative entity orders past support that covers a period in which the obligee was on cash assistance, the amount for that period is assigned to the state and the Title IV-D Agency shall distribute collections in accordance with A.R.S. § 46-408 and disburse support in accordance with this Article. If a child covered by the order was receiving Title IV-E foster care maintenance payments for any of the period covered by the judgment, the amount for that period is assigned to the state and collections shall be distributed in accordance with R6-7-608. A past support judgment ordered on and after September 26, 2008 does not accrue interest.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

R6-7-714. Interest on Arrearages
A. The Title IV-D Agency shall retain interest paid on arrearages assigned to the state of Arizona that do not exceed the total amount of unreimbursed cash assistance.

B. From October 1, 1997 through September 31, 2000, the Title IV-D Agency shall allocate the amount of interest on permanently assigned, temporarily assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed. The Title IV-D Agency shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages and multiplying the resulting percentages by the total amount of interest accrued.

C. On and after October 1, 2000, the Title IV-D Agency shall allocate the amount of interest on permanently assigned, temporarily assigned, conditionally assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed. The Title IV-D Agency shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages and multiplying the resulting percentages by the total amount of interest accrued.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-715. Unassigned Arrearages
A. If a family stops receiving cash assistance, the Title IV-D Agency shall compare unreimbursed cash assistance and assigned arrearages as of the last day of the month when the

family leaves assistance. If the total amount of assigned arrearages and accrued interest exceeds unreimbursed cash assistance, the Title IV-D Agency shall unassign the excess amount. These amounts are unassigned arrearages. The Title IV-D Agency shall unassign arrearages as follows:

1. First, from the interest owed on temporarily assigned arrearages;
2. Second, from the corresponding principal of the temporarily assigned arrearages;
3. Third, from the interest owed on permanently assigned arrearages; and
4. Fourth, from the corresponding principal on the permanently assigned arrearages.

B. On and after October 1, 2000, if the Title IV-D Agency unassigns arrearages from temporarily assigned amounts, these amounts are unassigned pre-assistance arrearages. The Title IV-D Agency shall first unassign the interest on arrearages and second unassign the corresponding principal on arrearages.

C. On and after October 1, 2000, if the Title IV-D Agency unassigns arrearages from permanently assigned amounts, these amounts are unassigned during-assistance arrearages. The Title IV-D Agency shall first unassign the interest on arrearages and second unassign the corresponding principal on arrearages.

D. For arrearages assigned before the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the federal government did not require states to track periods of assignment. If the Title IV-D Agency cannot determine whether the unassigned arrearages were from a pre-assistance period or a during-assistance period, the Title IV-D Agency shall treat those unassigned arrearages as unassigned pre-assistance arrearages.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

R6-7-716. Expired

Historical Note
New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

ARTICLE 8. EXPIRED

R6-7-801. Expired

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1973, effective April 23, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 466, effective January 11, 2017 (Supp. 17-1).

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.

25-503. Order for support; methods of payment; modification; termination; statute of limitations; judgment on arrearages; notice; security

A. In any proceeding in which there is at issue the support of a child, the court may order either or both parents to pay any amount necessary for the support of the child. If the court order does not specify the date when current support begins, the support obligation begins to accrue on the first day of the month following the entry of the order. If any form of payment is rightfully dishonored by the payor bank or other drawee, any subsequent support payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. The department may collect from the drawer of a dishonored payment an amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and 35-147, the department shall deposit monies collected pursuant to this subsection in a child support enforcement administration fund. If a party required to pay support by guaranteed means demonstrates full and timely payment for twenty-four consecutive months, that party may pay support by regularly accepted forms of payment if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee. On a showing of good cause, the court may order that the party or parties required to pay support give reasonable security for these payments. If the court sets an appearance bond and the obligor fails to appear, the bond is forfeited and credited against any support owed by the party required to pay support. This subsection does not apply to payments that are made by means of a wage assignment.

B. On a showing that an income withholding order has been ineffective to secure the timely payment of support and that an amount equal to six months of current support has accrued, the court shall require the obligor to give security, post bond or give some other guarantee to secure overdue support.

C. In title IV-D cases, and in all other cases subject to an income withholding order issued on or after January 1, 1994, after notice to the party entitled to receive support, the department or its agent may direct the party obligated to pay support or other payor to make payment to the support payment clearinghouse. The department or its agent shall provide notice by first class mail.

D. The obligation for current child support shall be fully met before any payments under an order of assignment may be applied to the payment of arrearages. If a party is obligated to pay support for more than one family and the amount available is not sufficient to meet the total combined current support obligation, any monies shall be allocated to each family as follows:

1. The amount of current support ordered in each case shall be added to obtain the total support obligation.

2. The ordered amount in each case shall be divided by the total support obligation to obtain a percentage of the total amount due.

3. The amount available from the obligor's income shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

E. Any order for child support may be modified or terminated on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate. The addition of health insurance coverage as defined in section 25-531 or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance. Modification and termination are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for modification or termination. The order of modification or termination may include an award of attorney fees and court costs to the prevailing party.

F. On petition of a person who has been ordered to pay child support pursuant to a presumption of paternity established pursuant to section 25-814, the court may order the petitioner's support to terminate if the court finds based on clear and convincing evidence that paternity was established by fraud, duress or material mistake of fact. Except for good cause shown, the petitioner's support obligations continue in effect until the court has

ruled in favor of the petitioner. The court shall order the petitioner, each child who is the subject of the petition and the child's mother to submit to genetic testing and shall order the appropriate testing procedures to determine the child's inherited characteristics, including blood and tissue type. If the court finds that the petitioner is not the child's biological father, the court shall vacate the determination of paternity and terminate the support obligation. Unless otherwise ordered by the court, an order vacating a support obligation is prospective and does not alter the petitioner's obligation to pay child support arrearages or any other amount previously ordered by the court. If the court finds that it is in the child's best interests, the court may order the biological father to pay restitution to the petitioner for any child support paid before the court ruled in favor of the petitioner pursuant to this subsection.

G. Notwithstanding subsection E of this section, in a title IV-D case a party, or the department or its agent if there is an assignment of rights under section 46-407, may request every three years that an order for child support be reviewed and, if appropriate, adjusted. The request may be made without a specific showing of a changed circumstance that is substantial and continuing. The department or its agent shall conduct the review in accordance with the child support guidelines of this state. If appropriate, the department shall file a petition in the superior court to adjust the support amount. Every three years the department or its agent shall notify the parties of their right to request a review of the order for support. The department or its agent shall notify the parties by first class mail at their last known address or by including the notice in an order.

H. If a party in a title IV-D case requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

I. The right of a party entitled to receive support or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. The department or its agent or a party entitled to receive support may also file a request for written judgment for support arrearages.

J. Voluntary relinquishment of physical custody of a child to the obligor from the obligee is an affirmative defense in whole or in part to a petition for enforcement of child support arrears. In determining whether the relinquishment was voluntary, the court shall consider whether there is any evidence or history of any of the following:

1. Domestic violence.

2. Parental kidnapping.

3. Custodial interference.

K. The relinquishment pursuant to subsection J of this section must have been for a time period in excess of any court-ordered period of parenting time and the obligor must have supplied actual support for the child.

L. If the obligee, the department or their agents make efforts to collect a child support debt more than ten years after the emancipation of the youngest child subject to the order, the obligor may assert as a defense, and has the burden to prove, that the obligee or the department unreasonably delayed in attempting to collect the child support debt. On a finding of unreasonable delay a tribunal, as defined in section 25-1202, may determine that some or all of the child support debt is no longer collectible after the date of the finding.

M. Notwithstanding any other law, any judgment for support and for associated costs and attorney fees is exempt from renewal and is enforceable until paid in full.

N. If a party entitled to receive child support or spousal maintenance or the department or its agent enforcing an order of support has not received court-ordered payments, the party entitled to receive support or spousal maintenance or the department or its agent may file with the clerk of the superior court a request for judgment of arrearages and an affidavit indicating the name of the party obligated to pay support and the amount of the arrearages. The request must include notice of the requirements of this section and the right to request a hearing

within twenty days after service in this state or within thirty days after service outside this state. The request, affidavit and notice must be served pursuant to the Arizona rules of family law procedure on all parties including the department or its agents in title IV-D cases. In a title IV-D case, the department or its agent may serve all parties by certified mail, return receipt requested. Within twenty days after service in this state or within thirty days after service outside this state, a party may file a request for a hearing if the arrearage amount or the identity of the person is in dispute. If a hearing is not requested within the time provided, or if the court finds that the objection is unfounded, the court must review the affidavit and grant an appropriate judgment against the party obligated to pay support.

O. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for a period of one hundred twenty days after the date the first payment is returned as undeliverable due to the failure of a party to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall return that and all other unassigned payments to the obligor unless there is an agreement of the obligor to pay assigned arrears and other debts owed to the state.

P. If the obligee of a child support order marries the obligor of the child support order, that order automatically terminates on the last day of the month in which the marriage takes place and arrearages do not accrue after that date. However, the obligee or the state may collect child support arrearages that accrued before that date. The obligee, the obligor or the department or its agent in a title IV-D case may file a request or stipulation to terminate or adjust any existing order of assignment pursuant to section 25-504 or 25-505.01.

Q. For the purposes of this chapter, a child is emancipated:

1. On the date of the child's marriage.

2. On the child's eighteenth birthday.

3. When the child is adopted.

4. When the child dies.

5. On the termination of the support obligation if support is extended beyond the age of majority pursuant to section 25-501, subsection A or section 25-320, subsections E and F.

25-504. Order of assignment; ex parte order of assignment; responsibilities; violation; termination

A. In a proceeding in which the court orders a person to pay support the court shall, and in a proceeding in which the court orders a person to pay spousal maintenance the court may, assign to the person or agency entitled to receive the support or spousal maintenance that portion of the person's income necessary to pay the amount ordered by the court. In a proceeding in which spousal maintenance is ordered to be paid the court shall order the assignment on either party's request.

B. A person who is obligated by an order to pay support or spousal maintenance, the person to whom support or spousal maintenance is ordered to be paid or the department or its agent in a title IV-D case may file a verified request with the clerk of the superior court requesting the clerk to issue an ex parte order of assignment for support or spousal maintenance. The ex parte order of assignment may include a payment for current support and any other support, current spousal maintenance, spousal maintenance arrearages and interest on spousal maintenance arrearages. A request filed by the department or its agent need not be verified. The request shall state:

1. The name of the person or agency entitled to receive support or spousal maintenance.

2. The monthly amount of any current support and the monthly amount of any spousal maintenance ordered by the court.

3. The specific amount requested for any support arrearages, spousal maintenance arrearages or interest.

4. The name and address of the payor to whom it is requested the order of assignment be directed and the name of the person obligated to pay support or spousal maintenance.

C. After receipt of a request for an ex parte order of assignment the clerk of the superior court, without a hearing or notice to the person obligated to pay support or spousal maintenance, shall issue an order of assignment of that portion of the person's income as is sufficient to pay the amount requested to the person or agency entitled to receive the support or spousal maintenance. The order of assignment shall include the social security number of the obligated person. On issuance of an ex parte order of assignment, the clerk shall issue a notice directed to the obligor in substantially the following form, which shall also be in Spanish:

Notice

To: The obligor (the person ordered to pay support or spousal maintenance)

This is to notify you that part of your income or other monies is being taken away by the enclosed order of assignment that was issued on a request for an order of assignment that also is enclosed. The order of assignment has been issued for currently accruing child support or spousal maintenance, or both, based on the requesting party's claim that you are obligated to pay this. In addition, the requesting party may be claiming a right to collect other support, as defined in section 25-500, Arizona Revised Statutes, arrearages on spousal maintenance or interest on a judgment for unpaid spousal maintenance.

If you believe the enclosed order of assignment is improper or unlawful, that your property is exempt by law or that your employer or other payor is withholding more than is permitted by law, you may request a hearing before the superior court. You must file a request to terminate or adjust the order of assignment on forms provided by the clerk of the court within seven days after your receipt of the order for assignment, request for an order of assignment and this notice. If you request a hearing, it will be held no more than ten days after you file your request with the court.

Here are some other important things you should know:

The order of assignment is effective immediately on service of the order on your employer or another payor. The first employer or payor served shall not withhold or deduct amounts specified in the ex parte order of assignment

for fourteen calendar days from the date of service to allow you, the obligor, an opportunity to contest the order of assignment as provided in section 25-504, Arizona Revised Statutes. A future employer or payor may begin deductions sooner than the fourteen day period after the order of assignment is received.

If you request a hearing, the court, after considering the financial resources of both parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to the other for the attorney fees and costs of filing or defending the request.

Under state law (section 33-1131, Arizona Revised Statutes) no more than one-half of your disposable earnings for any pay period may be taken to satisfy an order issued for support or spousal maintenance. The amount of disposable earnings exempt from the order of assignment must be paid to you when due. Disposable income means the remaining portion of your wages, salary or compensation for personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or a deferred compensation plan, after deducting from such earnings the amounts required by law to be withheld.

An employer or other payor who receives the order of assignment may deduct from amounts due to you one dollar for each pay period, but not more than four dollars per month, for costs. The employer or payor also must deduct a monthly amount for the support payment handling fee required by state law (section 25-510, Arizona Revised Statutes).

The employer or other payor on whom the order of assignment is served will continue to withhold the amount set in the order and will forward the payment to the support payment clearinghouse until you file with the clerk one of the following:

1. A verified request to adjust the order of assignment, and the court adjusts the order of assignment because there has been a change of circumstances since the time of the issuance of the order or there is other good cause to do so.

2. A verified request for a hearing to terminate the order of assignment and, after a hearing, the court terminates the order of assignment if all obligations have been satisfied or will be satisfied within ninety days.

3. A notarized stipulation stating that the obligation to pay support or spousal maintenance has ended and that all arrearages either have been satisfied or have been waived, and the clerk terminates the order of assignment.

An employer may not refuse to hire, may not discharge or may not otherwise discipline you as a result of the order of assignment. If you are wrongfully refused employment, discharged or otherwise disciplined you may recover damages suffered, plus reinstatement if appropriate, plus reasonable attorney fees and costs incurred against the employer.

Unless a court has expressly ordered otherwise, you must notify the clerk of the court or the support payment clearinghouse in writing of the address of your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court, including reasonable attorney fees and costs pursuant to state law (section 25-504, subsection R, Arizona Revised Statutes). Official notices will be delivered to you at the most recent addresses you have provided to the clerk or support payment clearinghouse.

D. Any order of assignment shall be issued only for support, spousal maintenance, spousal maintenance arrearages, interest on spousal maintenance arrearages and handling fees. The order of assignment shall state the total amount that the payor shall withhold. The order of assignment also shall specify the monthly amount of current support and any other payment ordered for support, the monthly amount of any current spousal maintenance, the monthly amount of any spousal maintenance arrearages and any monthly interest payment. If the obligor's disposable earnings from the primary employer or other payor do not meet the support obligation, the court shall issue an order of assignment to a secondary employer or other payor of the obligor in order to meet the full support obligation.

E. An order of assignment shall be served on any employer or other payor by first class mail, electronic transmission or personal delivery or pursuant to the Arizona rules of family law procedure. The order of assignment is effective immediately on receipt by any employer or other payor and any future employer or future payor. Any employer or other payor of monies shall begin withholding no later than fourteen days after receipt of an order of assignment. The employer or other payor, if feasible, may begin withholding sooner than the fourteen day period if a payment to the obligor is due sooner.

F. Two copies of an ex parte order of assignment and of the request for an order of assignment, together with a copy of the notice required by this section, shall be served on any employer or other payor in the same manner as other orders of assignment under this section. Within five days after receipt, the employer or payor shall serve by personal delivery or by registered mail one copy of the ex parte order of assignment and of the request and the notice on the employee or other payee. The ex parte order of assignment is effective on any employer or other payor, and as an assignment by operation of law is effective on any future employers or other future payors, immediately on receipt. The first employer or other payor served shall not withhold or deduct amounts specified in the ex parte order of assignment for fourteen calendar days to allow the obligor an opportunity to contest the order of assignment as provided in this section. Any future employers or future payors shall begin withholding not later than fourteen days after receipt of an ex parte order of assignment but, if feasible, may begin withholding sooner than fourteen days if a payment to the obligor is due sooner.

G. After service of an ex parte order of assignment on the employer or payor that initially receives the order of assignment, an obligor may request a hearing to contest the ex parte order of assignment. The request shall be made in writing, and the obligor shall state under oath the specific reason for the request. The request shall be filed with the court together with a notice of hearing form. The court shall hold a hearing within ten days after the request and notice of hearing form is filed. Immediately on the scheduling of the hearing, the obligor shall serve a copy of the request for and notice of hearing on the person entitled to receive support, and in a title IV-D case to the department. If the obligor files a request for hearing within seven days after receipt of the order of assignment, the court may order the support payment clearinghouse not to disburse any monies received pursuant to the order of assignment until further order of the court. The obligor may contest the withholding for any of the following reasons:

1. There is an error in the identity of the obligor.

2. There is an error in the amount of support or spousal maintenance.

3. Invalidity of the order for support or spousal maintenance.

4. Current support or spousal maintenance is no longer owed, if the order of assignment includes a payment for current support or spousal maintenance.

5. Arrearages are not owed if the order of assignment includes a payment for arrearages.

H. Any employer or other payor who has received any order of assignment shall withhold the amount specified in the order of assignment, together with the handling fee as provided in section 25-510, from the income of the person obligated to pay support or spousal maintenance and shall transmit the withheld monies to the support payment clearinghouse within two business days after the obligor is paid or after the payment to the obligor is due. The handling fee shall be deducted and transmitted monthly. For the cost of compliance the employer or payor may also withhold and retain an additional one dollar per payment but not more than four dollars per month for each obligor. An employer or payor may combine in a single payment withheld monies for more than one obligor, shall separately identify the portion of the remittance that is attributable to each obligor and shall include each obligor's social security number. An employer or payor shall notify the clerk or support payment clearinghouse in writing when the obligor is no longer employed or the right to receive income or other monies has been terminated. The employer or payor shall also notify the clerk or support payment clearinghouse in writing of the obligor's social security number and last known address and the name and address of the obligor's new employer, if known, within ten days. In a non-title IV-D case, within ten days after receiving this information the support payment clearinghouse shall notify the clerk of the superior court in the county where

the support or maintenance order was issued. If within ninety days of the last payment, the employer or other payor reemploys the obligor or becomes obligated to pay the obligor, the employer or payor is again bound by the order of assignment and is required to perform as required by this section. In a title IV-D case the order of assignment may be reinstated pursuant to section 25-505.01. An employer or payor who fails without good cause to comply with the terms of an order of assignment is liable for amounts not paid to the clerk or support payment clearinghouse pursuant to the order of assignment and reasonable attorney fees, costs and other expenses incurred in procuring compliance and may be subject to contempt.

I. If a person is obligated to pay child support for more than one family and the amount available for withholding is not sufficient to meet the total combined current child support obligation, any monies withheld from the obligor's income shall be allocated to each family by the employer or payor as follows:

1. The amount of current child support ordered in each case shall be added together to obtain the total current child support obligation.

2. The amount of current child support ordered in each case shall be divided by the total current child support obligation to obtain the percentage of the total current child support obligation to be allocated to each case.

3. The amount withheld from the obligor shall be multiplied by the percentage for each case to obtain the amount to be allocated to each case.

J. The person or agency entitled to receive support or spousal maintenance shall notify the clerk of the superior court or support payment clearinghouse in writing of any change of residential address and of any other information required pursuant to section 46-443, within ten days of any change. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments under an order of assignment for the period prescribed in section 25-503 due to the failure of an obligee to comply with the notice requirement of this subsection, the clerk or support payment clearinghouse shall not make further payment under the order of assignment and shall return payments to the obligor as prescribed in section 25-503. Under these circumstances the court, clerk or department or its agent shall order the release of the employer or payor from the order of assignment on request of the employer, the payor, the department or its agent or on the clerk's own initiative. Any order of assignment from which an employer or payor has been released may be reinstated by following the procedures for obtaining an ex parte order of assignment pursuant to this section or, in a title IV-D case, an administrative income withholding order pursuant to section 25-505.01.

K. Unless a court has ordered otherwise, the person ordered to pay support or spousal maintenance shall notify the clerk of the superior court or the support payment clearinghouse in writing of the obligor's residential address and the name and address of any employer, and within ten days of any change. Failure to do so may subject the person to sanctions for contempt of court, including reasonable attorney fees and costs.

L. Any order of assignment may be adjusted if there has been a change of circumstances since the date the order of assignment was issued or for good cause. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance shall file with the clerk of the superior court a request to adjust the order of assignment and a proposed order of assignment. The request shall specify the adjustment sought and the reason for the request. A copy of the request shall be served pursuant to the Arizona rules of family law procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. The party receiving the request and proposed order may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue the order of assignment as appropriate. Within two business days after the date the order of assignment is issued, the clerk shall transmit a copy of the order of assignment to the employer or payor, the department or its agent and all parties. Unless ordered otherwise by the court, in a title IV-D case any order of assignment may be adjusted pursuant to section 25-505.01.

M. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance may file a request to terminate any order of assignment if the obligation to pay support or spousal maintenance

has ended or will end within ninety days after the filing of the request and if all arrearages either have been paid or will be paid within the period or have been waived. The request shall state the reason why termination is requested and shall contain the name and address of the employer or payor of the person obligated to pay support. A copy of the request shall be served pursuant to the Arizona rules of family law procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. A party receiving this notice may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue an order terminating the order of assignment as appropriate. Within two business days after the date the order is issued, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. If a hearing is requested, the court shall set the hearing within twenty days after receiving the request and shall issue an appropriate order. A person who is ordered to pay support may request the court to terminate an order of assignment at any time if an employer is making deductions on multiple assignments for an obligation for the same minor children. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a person who files a request to terminate an order of assignment if an employer is making deductions on multiple assignments for an obligation for the same minor children.

N. If a request to adjust or terminate an order of assignment is filed, the court in its discretion may order that the clerk of the superior court or support payment clearinghouse not disburse any monies in dispute until further order of the court.

O. The clerk of the superior court shall issue an order terminating the order of assignment if the parties, including the department or its agent in a title IV-D case, file a notarized stipulation with the clerk that all obligations of support or spousal maintenance have been satisfied and that the obligor is no longer obligated to pay support or spousal maintenance. The stipulation shall state that the current obligation of support or spousal maintenance no longer exists and that all arrearages either have been satisfied or waived. The stipulation shall also contain the name and address of the employer or payor of the person obligated to pay support or spousal maintenance. Within five business days after the date the stipulation is filed, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a party who files a stipulation pursuant to this subsection.

P. An assignment ordered pursuant to this section has priority over all other executions, attachments or garnishments. An obligation for current child support shall be fully met before any payments pursuant to an order of assignment may be applied to any other support obligation. An assignment ordered under this section does not apply to amounts made exempt under section 33-1131 or any other applicable exemption law.

Q. Any employer or other payor shall not refuse to hire a person and shall not discharge or otherwise discipline an obligor because of service of an order of assignment authorized by this section. An employer or payor who refuses to hire a person or who discharges or otherwise disciplines an employee or obligor because of service of an order of assignment is subject to contempt and sanctions as may be ordered by the court. A person who is wrongfully refused employment, wrongfully discharged or otherwise disciplined is entitled to recover damages sustained by the prohibited conduct, reinstatement, if appropriate, and attorney fees and costs incurred.

R. In any proceeding under this section the court, after considering the financial resources of the parties and the reasonableness of the positions each party has taken, may order a party to pay a reasonable amount to another party for the costs and expenses, including attorney fees, of maintaining or defending the proceeding.

25-510. Receiving and disbursing support and maintenance monies; arrearages; interest

A. The support payment clearinghouse established pursuant to section 46-441 shall receive and disburse all monies, including fees and costs, applicable to support and maintenance unless the court has ordered that support or maintenance be paid directly to the party entitled to receive the support or maintenance. Within two business days the clerk of the superior court shall transmit to the support payment clearinghouse any maintenance and support payments received by the clerk. Monies received by the support payment clearinghouse in cases not enforced by the state pursuant to title IV-D of the social security act shall be distributed in the following priority:

1. Current child support or current court ordered payments for the support of a family when combined with the child support obligation.

2. Current spousal maintenance.

3. The current monthly fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

4. Past due support reduced to judgment and then to associated interest.

5. Past due spousal maintenance reduced to judgment and then to associated interest.

6. Past due support not reduced to judgment and then to associated interest.

7. Past due spousal maintenance not reduced to judgment and then to associated interest.

8. Past due amounts of the fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

B. In any proceeding under this chapter regarding a duty of support, the records of payments maintained by the clerk or the support payment clearinghouse are prima facie evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary.

C. At no cost to the clerk of the superior court, the department shall provide electronic access to all records of payments maintained by the support payment clearinghouse, and the clerk shall use this information to provide payment histories to all litigants, attorneys and interested persons and the court. For all non-title IV-D support cases, the clerk shall load new orders, modify order amounts, respond to payment inquiries, research payment related issues, release payments pursuant to orders of the court and update demographic and new employer information. The clerk shall forward orders of assignment to employers for non-title IV-D support orders. Within five business days the clerk shall provide to the department any new address, order of assignment or employment information the clerk receives regarding any support order. The information shall be provided as prescribed by the department of economic security in consultation with the administrative office of the courts.

D. The support payment clearinghouse shall receive a monthly fee for handling support and maintenance payments. The director, by rule, may establish this fee. The court shall order payment of the handling fee as part of the order for support or maintenance. The handling fee shall not be deducted from the support or maintenance portion of the payment.

E. In calculating support arrearages not reduced to a final written money judgment, interest accrues at the rate of ten per cent per annum beginning at the end of the month following the month in which the support payment is due, and interest accrues only on the principal and not on interest. A support arrearage reduced to a final written money judgment accrues interest at the rate of ten per cent per annum and accrues interest only on the principal and not on interest.

F. Past support reduced to a final written money judgment before September 26, 2008 and pursuant to section 25-320, subsection C or section 25-809, subsection B accrues interest at the rate of ten per cent per annum beginning on entry of the judgment by the court and accrues interest only on the principal and not on interest. Past support reduced to a final written money judgment beginning on September 26, 2008 and pursuant to section 25-320, subsection C or section 25-809, subsection B does not accrue interest for any time period.

G. Any direct payments not paid through the clearinghouse or any equitable credits of principal or interest permitted by law and allowed by the court after a hearing shall be applied to support arrearages as directed in the court order. The court shall make specific findings in support of any payments or credits allowed. If the court order does not expressly state the dates the payments or credits are to be applied, the payments or credits shall be applied on the date of the entry of the order that allows the payments or credits. In a title IV-D case, if a court order does not indicate on its face that the state was either represented at or had notice of the hearing or proceeding where the payments or credits were determined, the court order shall not reduce any sum owed to the department or its agent without written approval of the department or its agent.

H. Any credit against support arrearages, other than by court order, shall be made only by written affidavit of direct payment or waiver of support arrearages signed by the person entitled to receive the support or by that person and the person ordered to make the support payment. The affidavit of direct payment or waiver of support arrearages shall be filed directly with the clerk of the court, who shall enter the information into the statewide case registry. Any credits against support arrearages shall be applied as of the dates contained in the affidavit or the date of the affidavit if no other date is specified in the affidavit. In a title IV-D case, the affidavit of direct payment or waiver of support arrearages shall not reduce any sum owed to the department or its agent without written approval of the department or its agent.

I. An arrearage calculator may be developed by a government agency using an automated transfer of data from the clearinghouse and the child support registry. The arrearage figure produced by this calculator is presumed to be the correct amount of the arrearage.

25-522. Administrative review; notice; determination; judicial review; definitions

A. An obligor may contest an enforcement action by the department or its agent by filing a request for administrative review. An obligee may contest the distribution or disbursement of support payments by the department or its agent by filing a request for administrative review. The obligor, the obligee or the caretaker may contest the disbursement of support to a noncustodial person other than the state by filing a request for administrative review pursuant to section 46-444. The request shall be in writing, shall be signed by the requesting party, shall include a residential and mailing address and may be transmitted electronically. The request shall state the basis for the dispute and shall include any relevant information to assist the department or its agent, including a copy of any order issued, documentation of support payments made and any notice sent by the department or its agent.

B. Within ten business days after receiving the request for review, the department or its agent shall send a notice of acknowledgment of receipt of request for administrative review to the person filing the request and shall specify any additional information the department or its agent requires to complete the review. The department or its agent on its own initiative may also request any other additional information it deems necessary to make its determination. The department or its agent shall also notify the obligee of the obligor's request for review of enforcement actions.

C. Except for obligee complaints made under section 46-408 as to distribution of support, the department or its agent shall issue a written determination within forty-five business days after sending the notice of acknowledgment of receipt of request for administrative review, or if additional information is required, forty-five business days after receipt of this information. If additional information is not received from the requesting party or another person within thirty business days after the date of the department's or the agent's request for additional information, the department shall issue a final written determination within ten business days after the due date for receipt of the additional information based on the available information. The final determination shall be in writing, and a copy shall be served on all parties by first class mail or may be delivered electronically if electronic contact information is included in the request for administrative review.

D. Notwithstanding subsections B and C of this section, if the basis for the request for review is an income withholding order issued by the department pursuant to section 25-505.01, a lien recorded pursuant to section 25-516 or a levy made pursuant to section 25-521, the department shall review the request and issue a final determination within ten business days after it receives the request for review. The department shall send a copy of the final determination by first class mail to all parties.

E. Notwithstanding subsections B, C and D of this section, if the basis for the request for review is a mistake in identity pursuant to section 25-521, the department shall issue a final determination by first class mail to all parties within two business days after receiving adequate documentation to determine the mistake in identity.

F. A department determination made pursuant to this section is subject to judicial review under title 12, chapter 7, article 6, except that an appeal by an obligee of a department determination made pursuant to this section regarding the distribution of support payments shall be made pursuant to title 41, chapter 14, article 3.

G. For the purposes of this section:

1. "Business day" means a day on which state offices are open for regular business.

2. "Department" includes the department's agent.

3. "Enforcement action" means an action taken by the department to:

(a) Suspend or deny a license.

(b) Impose a lien against real or personal property.

(c) Issue a notice of levy against assets held by or on behalf of an obligor.

(d) Issue an income withholding order or order to modify or terminate an income withholding order.

(e) Report an obligor to a consumer reporting agency.

(f) Issue a medical support notice of enrollment prescribed by the United States secretary of health and human services.

(g) Offset federal payments.

(h) Disburse support to a caretaker.

46-441. Support payment clearinghouse; records transfer; payment; definition

A. The department shall establish a central support payment clearinghouse to receive, disburse and monitor support payments pursuant to title IV-D of the social security act.

B. Unless the court orders that support or maintenance be paid directly to the party entitled to receive it, all orders for support shall direct payment of support or maintenance through the support payment clearinghouse. All orders that specify payments through the clerk of the superior court shall be deemed to require payment to the support payment clearinghouse after a notice to the obligor is issued.

C. The clerk of the superior court shall provide copies of all payment histories and relevant legal documents pertaining to the issue of support.

D. On request the support payment clearinghouse shall promptly furnish to the person entitled to receive support or maintenance information on the current status of payments received and processed through the support payment clearinghouse.

E. Support payments and handling fees in an amount prescribed in section 25-510 for the monthly support handling fee shall be paid to the support payment clearinghouse. The director shall deposit, pursuant to sections 35-146 and 35-147, the handling fees received by the department in a child support enforcement administration fund.

F. If after reasonable efforts to locate the obligee the support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall not make further payment and shall return the payments to the obligor as prescribed in section 25-503.

G. The support payment clearinghouse shall have an accounting system for monitoring child support payments. The records of the support payment clearinghouse are prima facie evidence of payment or nonpayment of support.

H. Payment of any money directly to an obligee or to a person other than the support payment clearinghouse shall not be credited against the support obligation unless the direct payments were ordered by the court, or made pursuant to a written support agreement by the parties.

I. The support payment clearinghouse shall issue copies of payment histories for payments received and processed through the support payment clearinghouse on request and may charge a fee for these services.

J. For the purposes of this section "support" has the same meaning prescribed in section 25-500.

E-2.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 13

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 13

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to sixty (60) rules in Title 6, Chapter 13, Article 1 regarding State Assistance Programs, specifically, the Tuberculosis Control Program (Program). The Program determines eligibility and provides assistance for the support of applicants who are certified unemployable by the State Tuberculosis Control Officer as a result of communicable tuberculosis.

In the previous 5YRR for these rules, which was approved by the Council in July 2019, the Department stated it intended to pursue a rulemaking to outline the appellate process for all administrative hearings conducted by the Appellate Services Division. The Department stated it intended for this rulemaking to consolidate the current rules, eliminate separate hearing rules for multiple Chapters under Title 6, and increase consistency to stakeholders, program participants, and community partners. The Department indicates, in September 2018, the Department received an exception from the regulatory moratorium allowing the Department to proceed with a rulemaking and consolidation process. The Department planned to submit a Notice of Final Rulemaking to the Council in June 2020. However, the Department indicates it is currently in the process of updating Title 6, Chapter 14, Nutrition Assistance Program rules, and Title 6,

Chapter 9, Appellate Service Administration rules, that support the proposed revisions for Title 6, Chapter 13, Article 1.

Proposed Action

The Department indicates certain rules are not clear, concise, understandable, effective, or enforced as written as outlined in more detail below. In addition to the rulemakings to consolidate current rules and eliminate separate hearing rules for multiple Chapters as outlined above, the Department anticipates submitting a Notice of Final Rulemaking for revisions to Title 6, Chapter 13, Article 1 to the Council by March 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

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:

In the 2019 5YRR, the Department reported that 15 individuals had participated in the program, benefits paid totaled $8,500, and no additional resources were added or necessary to operate the program. For FY 2024, 22 individuals participated in the program, and benefits paid totaled $6,906. The Department does not anticipate requiring any additional resources to conduct the program, and that the program will continue to have minimal economic impact. Additionally, the Department has determined that these rules do not impose any cost to consumers or small businesses and will be modified to align with current Nutrition Assistance program rules, Cash Assistance program rules, and Appellate Services Administration rules when codified. Updates to the rules identified in this report outweigh any potential costs incurred from the proposed revisions.

Stakeholders are identified as the Tuberculosis Control Program; individuals who may be eligible to participate in, are applying to, or are receiving aid from the Tuberculosis Control Program; individuals holding an EBT card; individuals involved in an appeal process; the Department; and the 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 these 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?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable except for the following:

- **R6-13-102 Definitions:** The definitions in this article require updating to align phrases, terms, and definitions across programs administered by the Department, including the Nutrition Assistance and Cash Assistance programs.
- **R6-13-104 Applicant Responsibilities at Initial Application**: This rule requires updating to better describe how the Department determines the date of the application.
- **R6-13-105 Department Responsibilities at Initial Application:** This rule requires updating to remove out-of-date language and to more specifically describe the contents of a completed application.
- **R6-13-106 Applicant Responsibilities at the Initial Interview:** This rule requires revision to remove unnecessary information, and because the rule requires the applicant to provide verification of the documentation when the verification process is the Department's responsibility.
- **R6-13-107 Agency Responsibilities at the Initial Interview:** This rule requires updating to improve clarity and understandability and to remove redundancy regarding the verification process.
- **R6-13-108 Processing the Initial Application:** This rule requires updating to improve clarity and concision, and create an understanding of the process for approving, withdrawing or denying an application.
- **R6-13-109 Case Record:** This rule requires revision to update the retention period for a Tuberculosis Control Program case record to align with the retention period as published by the Secretary of State in the Arizona State Library, Archives and Public Records Retention Schedules for the Department.
- **R6-13-111 Manuals:** This rule requires revision because the name of the policy manual has changed and needs to be updated in the rules.
- **R6-13-115 Availability and Ownership of Resources:** This rule requires updating to better explain how the Department considers resources and how the Department determines the availability of jointly owned resources in separate households.
- **R6-13-118 Income Exclusions:** This rule requires updating to explain "Negative Rent Utility Payments" and to replace "Workforce Innovation and Opportunity Act" for "Workforce Investment Act" as this law was reauthorized and renamed by Congress.
- **R6-13-142 Entitlement to a Hearing; Appealable Action:** This rule is not effective because it does not explain that a party may not only request a hearing on an adverse action taken by the Department, but they may also request a hearing when the Department fails to timely act.
- **R6-13-143 Computation of Time:** This rule is not effective because it does not align with the current Department practice of allowing consideration of the additional five days for transmittal by U.S. Mail. The Department proposes to amend this rule to include the additional five days.

- **R6-13-144 Request for Hearing; Form; Time Limits; Presumptions:** This rule is not effective because it is unclear on the methods for requesting an appeal and contains provisions no longer required by the Department. An applicant or recipient may file a hearing request by completing a Department form and submitting the form in person, by mail, fax, phone, or online as directed on the form. The Department currently processes any request for a hearing that contains sufficient information for the Department to determine an appellant's identity.
- **R6-13-145 Family Assistance Administration: Transmittal of Appeal:** The rule is not effective because it does not accurately describe the prehearing summary process.
- **R6-13-146 Stay of Adverse Action Pending Appeal:** This rule requires revision to explain that there is no requirement for a client to proactively request to continue to receive benefits while awaiting an appeal decision. If the appeal is filed within the 10 day period, benefits will continue pending a hearing officer's decision.
- **R6-13-147 Hearings: Location; Notice; Time:** This rule is not effective because the information contained in this rule does not explain that a party may also request an in-person hearing or an earlier hearing and that the hearing officer may dismiss the hearing request if a party fails to appear for the hearing.
- **R6-13-148 Postponing the Hearing:** This rule is not effective because the Department permits the appellant to receive one postponement of the first scheduled hearing, not to exceed 30 days and does not require a showing of good cause for the first request. The Office of Appeals may grant subsequent postponements upon a showing of good cause.
- **R6-13-151 Subpoenas:** This rule requires revision to remove the requirement that a party first attempt to obtain documents or witness's appearance by voluntary means.
- **R6-13-152 Parties' Rights:** This rule requires revision to add that a party may also bring witnesses to the hearing and may also question or refute any testimony or evidence presented.
- **R6-13-153 Withdrawal of an Appeal:** This rule is not effective because it does not include the Department's responsibility to send a written notification to the appellant confirming that an oral request to withdraw an appeal has been received and providing the appellant an opportunity to reinstate a hearing.
- **R6-13-154 Failure to Appear; Default; Reopening:** This rule is not effective because the Department has instituted procedural changes to the process for establishing good cause for failure to appear at a hearing. A separate hearing to determine the validity of a good cause claim is no longer required when the party requests that a hearing be reopened and provides an acceptable good cause reason for having not attended the original hearing. The hearing officer may reopen the proceedings and schedule a new hearing with notice to all parties.
- **R6-13-155 Hearing Proceedings:** This rule requires revision because the Arizona Revised Statutes citation in section (C) is incorrect and should be A.R.S. § 41-1062(A). This rule also requires updating to reflect updated practices.
- **R6-13-156 Hearing Decision:** This rule requires revision to add that the hearing decision also contains a statement that an appeal of the decision may result in a reversal of the decision.
- **R6-13-158 Further Administrative Appeal:** This rule is not effective because section (C) should be deleted as the parties are no longer required to mail a copy of the petition

for review to the other parties as this is a process conducted by the Office of Appeals. The Department proposes to delete section (D) as unnecessary and confusing.

- **R6-13-159 Appeals Board:** This rule is not effective because section (B) lists additional actions that the Appeals Board may take following a decision. The Department proposes to delete this rule as the actions of the Appeals Board are not governed by these rules.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are consistent with other rules and statutes except for the following:

- **R6-13-155 Hearing Proceedings:** This rule requires revision because the Arizona Revised Statutes citation in section (C) is incorrect and should be A.R.S. § 41-1062(A). This rule also requires updating to reflect updated practices.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their regulatory objectives except for the following:

- **R6-13-102 Definitions:** The definitions in this article require updating to align phrases, terms, and definitions across programs administered by the Department, including the Nutrition Assistance and Cash Assistance programs.
- **R6-13-104 Applicant Responsibilities at Initial Application**: This rule requires updating to better describe how the Department determines the date of the application.
- **R6-13-105 Department Responsibilities at Initial Application:** This rule requires updating to remove out-of-date language and to more specifically describe the contents of a completed application.
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- **R6-13-108 Processing the Initial Application:** This rule requires updating to improve clarity and concision, and create an understanding of the process for approving, withdrawing or denying an application.
- **R6-13-109 Case Record:** This rule requires revision to update the retention period for a Tuberculosis Control Program case record to align with the retention period as published by the Secretary of State in the Arizona State Library, Archives and Public Records Retention Schedules for the Department.
- **R6-13-115 Availability and Ownership of Resources:** This rule requires updating to better explain how the Department considers resources and how the Department determines the availability of jointly owned resources in separate households.

- "Workforce Investment Act" as this law was reauthorized and renamed by Congress.
- **R6-13-142 Entitlement to a Hearing; Appealable Action:** This rule is not effective because it does not explain that a party may not only request a hearing on an adverse action taken by the Department, but they may also request a hearing when the Department fails to timely act.
- **R6-13-143 Computation of Time:** This rule is not effective because it does not align with the current Department practice of allowing consideration of the additional five days for transmittal by U.S. Mail. The Department proposes to amend this rule to include the additional five days.
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- **R6-13-148 Postponing the Hearing:** This rule is not effective because the Department permits the appellant to receive one postponement of the first scheduled hearing, not to exceed 30 days and does not require a showing of good cause for the first request. The Office of Appeals may grant subsequent postponements upon a showing of good cause.
- **R6-13-151 Subpoenas:** This rule requires revision to remove the requirement that a party first attempt to obtain documents or witness's appearance by voluntary means.
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- **R6-13-153 Withdrawal of an Appeal:** This rule is not effective because it does not include the Department's responsibility to send a written notification to the appellant confirming that an oral request to withdraw an appeal has been received and providing the appellant an opportunity to reinstate a hearing.
- **R6-13-154 Failure to Appear; Default; Reopening:** This rule is not effective because the Department has instituted procedural changes to the process for establishing good cause for failure to appear at a hearing. A separate hearing to determine the validity of a good cause claim is no longer required when the party requests that a hearing be reopened and provides an acceptable good cause reason for having not attended the

original hearing. The hearing officer may reopen the proceedings and schedule a new hearing with notice to all parties.

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- **R6-13-159 Appeals Board:** This rule is not effective because section (B) lists additional actions that the Appeals Board may take following a decision. The Department proposes to delete this rule as the actions of the Appeals Board are not governed by these rules.

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the rules are currently enforced as written except for the following:

- **R6-13-143 Computation of Time:** This rule is not effective because it does not align with the current Department practice of allowing consideration of the additional five days for transmittal by U.S. Mail. The Department proposes to amend this rule to include the additional five days.
- **R6-13-144 Request for Hearing; Form; Time Limits; Presumptions:** This rule is not effective because it is unclear on the methods for requesting an appeal and contains provisions no longer required by the Department. An applicant or recipient may file a hearing request by completing a Department form and submitting the form in person, by mail, fax, phone, or online as directed on the form. The Department currently processes any request for a hearing that contains sufficient information for the Department to determine an appellant's identity.
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good cause claim is no longer required when the party requests that a hearing be reopened and provides an acceptable good cause reason for having not attended the original hearing. The hearing officer may reopen the proceedings and schedule a new hearing with notice to all parties.

- **R6-13-155 Hearing Proceedings:** This rule requires revision because the Arizona Revised Statutes citation in section (C) is incorrect and should be A.R.S. § 41-1062(A). This rule also requires updating to reflect updated practices.

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 Department indicates there are no corresponding federal laws specific to the Tuberculosis Control Program.

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?

The Department states A.R.S. § 41-1037 does not apply to these rules because they do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to sixty (60) rules in Title 6, Chapter 13, Article 1 regarding State Assistance Programs, specifically, the Tuberculosis Control Program. The Program determines eligibility and provides assistance for the support of applicants who are certified unemployable by the State Tuberculosis Control Officer as a result of communicable tuberculosis. The Department indicates certain rules are not clear, concise, understandable, effective, or enforced as written as outlined in more detail above. In addition to the rulemakings to consolidate current rules and eliminate separate hearing rules for multiple Chapters as outlined above, the Department anticipates submitting a Notice of Final Rulemaking for revisions to Title 6, Chapter 13, Article 1 to the Council by March 2025.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Vacant
Director

August 26, 2024

Ms. Jessica Klein
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Klein:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 13 - State Assistance Programs.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Hiroko Flores, Deputy Rules Administrator, at (480) 487-7694 or hflores@azdes.gov.

Sincerely,

Nicole Davis
General Counsel/Chief Governance Officer

Attachment

Department of Economic Security

Title 6, Chapter 13

State Assistance Programs

Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1954(A)(3), 46-134(1), and 46-134(10)

Specific Statutory Authority: A.R.S. § 36-716

2. Analysis of rules:

Rule	Analysis	
R6-13-102	Title:	Definitions
	Objective:	The objective of this rule is to define words and phrases used in Chapter 13 to promote a uniform understanding of terms used by the Tuberculosis Control Program.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: The definitions in this article require updating to align phrases, terms, and definitions across programs administered by the Department, including the Nutrition Assistance and Cash Assistance programs.

Rule	Analysis	
R6-13-103	Title:	Individuals Who May Qualify for Assistance
	Objective:	The objective of this rule is to provide financial and nonfinancial criteria for individuals who may be eligible to participate in the Tuberculosis Control Program.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

Rule **Analysis**

R6-13-104 Title: Applicant Responsibilities at Initial Application

Objective: The objectives of this rule are to explain how a person may apply for assistance, the information required in the application, and how the application filing date is determined.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires updating to better describe how the Department determines the date of the application.

Rule **Analysis**

R6-13-105 Title: Department Responsibilities at Initial Application

Objective: The objective of this rule is to explain the Department's responsibilities when an application is received, the Department's requirement to assist the applicant in completing the application if needed, and to describe the contents of a completed application.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires updating to remove out-of-date language and to more specifically describe the contents of a completed application.

Rule **Analysis**

R6-13-106 Title: Applicant Responsibilities at the Initial Interview

Objective: The objective of this rule is to inform an applicant of their responsibilities during and after the eligibility interview process.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision to remove unnecessary information, and because the rule requires the applicant to provide verification of the documentation when the verification process is the Department's responsibility.

Rule **Analysis**

R6-13-107 Title: Agency Responsibilities at the Initial Interview

Objective: The objective of this rule is to describe the Department's responsibilities to inform applicants of the program's terms and conditions, the applicant's rights and responsibilities, and how the Department verifies the applicant's information to determine eligibility.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires updating to improve clarity and understandability and to remove redundancy regarding the verification process.

Rule **Analysis**

R6-13-108 Title: Processing the Initial Application

Objective: The objective of this rule is to provide the timeframe within which the Department must complete the eligibility determination, the exceptions to the timeframe, and the reasons why an application may be denied.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires updating to improve clarity and concision, and create an understanding of the process for approving, withdrawing or denying an application.

Rule **Analysis**

R6-13-109 Title: Case Record

Objective: The objective of this rule is to specify the information the Department maintains in the case record and how long the information is retained.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision to update the retention period for a Tuberculosis Control Program case record to align with the retention period as published by the Secretary of State in the Arizona State Library, Archives and Public Records Retention Schedules for the Department.

Rule **Analysis**

R6-13-110 Title: Confidentiality

Objective: The objective of this rule is to explain the Department's responsibility to maintain the confidentiality of an applicant's or recipient's records.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-111 Title: Manuals

Objective: The objective of this rule is to describe the Department's responsibility to make the program's policy manual available through the Department website and for viewing in offices.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision because the name of the policy manual has changed and needs to be updated in the rules.

Rule **Analysis**

R6-13-112 Title: Nonfinancial Eligibility Determination

Objective: The objective of this rule is to explain the three nonfinancial eligibility factors that an applicant must satisfy to be eligible for the program.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-113 Title: Resource Limitations

Objective: The objective of this rule is to establish the resource limit that the assistance unit must not exceed to be eligible for the program, and specify the resource equity value excluded by the Department when determining countable resources.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-114 Title: Resource Verification

Objective: The objective of this rule is to inform the public that the Department will verify all resources.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-115 Title: Availability and Ownership of Resources

Objective: The objective of this rule is to describe how the Department establishes whether a resource is available or unavailable to the assistance unit and whether the resource is countable when determining eligibility.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires updating to better explain how the Department considers resources and how the Department determines the availability of jointly owned resources in separate households.

Rule **Analysis**

R6-13-116 Title: Nonrecurring Lump-sum Payments

Objective: The objective of this rule is to describe when a lump sum payment is counted as a resource and when it is considered as income.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-117 Title: Treatment of Income; Overview

Objective: The objective of this rule is to describe the monies the Department considers as income and specify that the Department considers all non-excluded income available to the assistance unit.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-118 Title: Income Exclusions

Objective: The objective of this rule is to identify the types of income that are excluded when determining eligibility.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires updating to explain "Negative Rent Utility Payments" and to replace "Workforce Innovation and Opportunity Act" for "Workforce Investment Act" as this law was reauthorized and renamed by Congress.

Rule **Analysis**

R6-13-119 Title: Determining Income Eligibility and a Cash Benefit Amount for an Assistance Unit

Objective: The objective of this rule is to explain the methods by which the

Department determines countable monthly income, and the method used to determine a cash benefit amount.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-120 Title: Determining Monthly Gross Income

Objective: The objective of this rule is to explain how the Department calculates countable monthly gross income.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-121 Title: Methods to Determine Monthly Income

Objective: The objective of this rule is to explain the formulas the Department uses to convert income which is received other than once a month into a monthly gross amount.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-122 Title: Income Verification

Objective: The objective of this rule is to inform the public that the Department is required to verify income before determining eligibility and benefit amount.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-123 Title: Earned Income Deductions

Objective: The objective of this rule is to describe the earned income work expense deduction and its purpose.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-124 Title: Determining Income Eligibility and Cash Benefit Amount

Objective: The objective of this rule is to explain the methodology used when determining income eligibility and the cash benefit.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-125 Title: Benefit Payments

Objective: The objective of this rule is to establish timeframes for when initial and ongoing monthly benefits become available to the assistance unit.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-126 Title: Payment Method

Objective: The objective of this rule is to describe how the Department provides benefit payments to the assistance unit.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-127 Title: EBT Card Issuance

Objective: The objective of this rule is to explain the Department's responsibilities when issuing an EBT card to the assistance unit.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-128 Title: EBT Alternate Card Holder

Objective: The objective of this rule is to inform the recipient that they may designate up to two EBT Alternate Account Holders and the alternate account holders' responsibilities upon receipt of their EBT card.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-129 Title: Change in Arizona Residency

Objective: The objective of this rule is to inform an assistance unit that they may access any remaining EBT account funds if they move from the state of Arizona.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-130 Title: Replacing Lost, Stolen or Damaged Cards

Objective: The objective of this rule is to outline the responsibilities of the assistance unit, EBT Customer Service, and the Department when an EBT card is lost, stolen, or damaged.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-131 Title: Inactive Accounts; Unused Benefits

Objective: The objective of this rule is to inform recipients that they may lose access to the funds in their EBT account following a period of inactivity.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-132 Title: Supplemental Payments

Objective: The objective of this rule is to describe the Department's responsibility to correct the underpayment of benefits.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-133 Title: Overpayments: Date of Discovery, Collection

Objective: The objective of this rule is to inform an assistance unit of the Department's responsibility to identify and recoup overpayments.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-134 Title: Methods of Collection and Recoupment

Objective: The objective of this rule is to advise an assistance unit on the methods by which the Department may recover overpayments.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-135 Title: Overpayment Calculation Date

Objective: The objective of this rule is to explain how the Department determines when an assistance unit's overpayment period begins.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-136 Title: Completion of Treatment

Objective: The objective of this rule is to explain that an assistance unit is no longer eligible for benefits when the Department receives notification from the Department of Health Services that the treatment is complete.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-137 Title: Eligibility Review

Objective: The objective of this rule is to inform an assistance unit of the Department's eligibility review process.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-138 Title: Requirement to Report Changes

Objective: The objective of this rule is to inform the assistance unit of their responsibility to report, within a specified time frame, changes that may affect their eligibility or benefit amount and to provide verification when requested.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-139 Title: Agency Responsibilities for Processing Changes

Objective: The objective of this rule is to inform the assistance unit of the Department's actions when changes are reported.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-140 Title: Reinstatement of Terminated Benefits

Objective: The objective of this rule is to inform the assistance unit of the circumstances under which the Department reinstates terminated benefits.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-141 Title: Notice of Adverse Action

Objective: The objective of this rule is to explain the conditions under which the Department sends an assistance unit a notice of adverse action and the information contained in the notice.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-142 Title: Entitlement to a Hearing; Appealable Action

Objective: The objective of this rule is to notify an applicant or recipient of the right to a hearing on an appealable adverse action.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because it does not explain that a party may not only request a hearing on an adverse action taken by the Department, but they may also request a hearing when the Department fails to timely act.

Rule **Analysis**

R6-13-143 Title: Computation of Time

Objective: The objective of this rule is to explain how timeframes specific to these rules are calculated.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because it does not align with the current Department practice of allowing consideration of the additional five days for transmittal by U.S. Mail. The Department proposes to amend this rule to include the additional five days.

Rule **Analysis**

R6-13-144 Title: Request for Hearing; Form; Time Limits; Presumptions

Objective: The objective of this rule is to explain the methods by which a person can appeal an adverse action by requesting a hearing. The rule also explains how the date and timeliness of the request is determined.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because it is unclear on the methods for requesting an appeal and contains provisions no longer required by the Department. An applicant or recipient may file a hearing request by completing a Department form and submitting the form in person, by mail, fax, phone, or online as directed on the form. The Department currently processes any request for a hearing that contains sufficient information for the Department to determine an appellant's identity.

Rule **Analysis**

R6-13-145 Title: Family Assistance Administration: Transmittal of Appeal

Objective: The objective of this rule is to explain the program's responsibilities in processing an appeal.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: The rule is not effective because it does not accurately describe the prehearing summary process.

Rule **Analysis**

R6-13-146 Title: Stay of Adverse Action Pending Appeal

Objective: The objective of this rule is to explain that a recipient may continue to receive Tuberculosis Control Program assistance under specific conditions pending the receipt of a decision from the Hearing Officer.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision to explain that there is no requirement for a client to proactively request to continue to receive benefits while awaiting an appeal decision. If the appeal is filed within the 10 day period, benefits will continue pending a hearing officer's decision.

Rule **Analysis**

R6-13-147 Title: Hearings: Location; Notice; Time

Objective: The objective of this rule is to explain the Office of Appeals' responsibilities to schedule the hearing and notify all parties within specific timeframes, and to describe the information included in the notice of hearing.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because the information contained in this

rule does not explain that a party may also request an in-person hearing or an earlier hearing and that the hearing officer may dismiss the hearing request if a party fails to appear for the hearing.

Rule **Analysis**

R6-13-148 Title: Postponing the Hearing

Objective: The objective of this rule is to explain how the parties may request a postponement of the hearing and the process to do so.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because the Department permits the appellant to receive one postponement of the first scheduled hearing, not to exceed 30 days and does not require a showing of good cause for the first request. The Office of Appeals may grant subsequent postponements upon a showing of good cause.

Rule **Analysis**

R6-13-149 Title: Hearing Officer: Duties and Qualifications

Objective: The objective of this rule is to enumerate the responsibilities of the Hearing Officer in the appeals process.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-150 Title: Change of Hearing Officer; Challenges for Cause

Objective: The objective of this rule is to explain the circumstances under which a party may request a different Hearing Officer from the one currently assigned to the hearing and the responsibilities of the Office of Appeals when a request is made.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-151 Title: Subpoenas

Objective: The objective of this rule is to explain the process by which a party may request the issuance of a subpoena and the responsibilities of the requesting party, the Hearing Officer, and the Office of Appeals in this process.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision to remove the requirement that a party first attempt to obtain documents or witness's appearance by voluntary means.

Rule **Analysis**

R6-13-152 Title: Parties' Rights

Objective: The objective of this rule is to list the rights of each party during the appeals process.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision to add that a party may also bring witnesses to the hearing and may also question or refute any testimony or evidence presented.

Rule **Analysis**

R6-13-153 Title: Withdrawal of an Appeal

Objective: The objective of this rule is to explain the process by which an appellant may withdraw an appeal and the action of the Office of Appeals when an appeal is withdrawn.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because it does not include the Department's responsibility to send a written notification to the appellant confirming that an oral request to withdraw an appeal has been received and providing the appellant an opportunity to reinstate a hearing.

Rule **Analysis**

R6-13-154 Title: Failure to Appear; Default; Reopening

Objective: The objective of this rule is to explain the responsibilities of the Hearing Officer when the appellant fails to appear for a scheduled hearing and provide an opportunity for the appellant to request to reopen the proceedings.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because the Department has instituted procedural changes to the process for establishing good cause for failure to appear at a hearing. A separate hearing to determine the validity of a good cause claim is no longer required when the party requests that a hearing be reopened and provides an acceptable good cause reason for having not attended the original hearing. The hearing officer may reopen the proceedings and schedule a new hearing with notice to all parties.

Rule **Analysis**

R6-13-155 Title: Hearing Proceedings

Objective: The objective of this rule is to explain the hearing procedures,

including the responsibilities of the parties and the Hearing Officer.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☐ Yes ☑ No
- Is this rule enforced as written? ☐ Yes ☑ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision because the Arizona Revised Statutes citation in section (C) is incorrect and should be A.R.S. § 41-1062(A). This rule also requires updating to reflect updated practices.

Rule **Analysis**

R6-13-156 Title: Hearing Decision

Objective: The objective of this rule is to establish a timeframe for the hearing decision, the elements that must be included in the Hearing Officer's decision, and the notification requirements.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule requires revision to add that the hearing decision also contains a statement that an appeal of the decision may result in a reversal of the decision.

Rule **Analysis**

R6-13-157 Title: Effect of the Decision

Objective: The objective of this rule is to explain the types of decisions rendered by the hearing officer and the effect of the decision on all parties.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

Rule **Analysis**

R6-13-158 Title: Further Administrative Appeal

Objective: The objective of this rule is to explain that a party may appeal the hearing officer's decision to the Department's Appeals Board, and explain the procedures for appealing the decision.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because section (C) should be deleted as the parties are no longer required to mail a copy of the petition for review to the other parties as this is a process conducted by the Office of Appeals. The Department proposes to delete section (D) as unnecessary and confusing.

Rule **Analysis**

R6-13-159 Title: Appeals Board

Objective: The objective of this rule is to explain the responsibilities of the Department's Appeals Board when a party has appealed the decision of a hearing officer.

- Is this rule effective in meeting the objective? ☐ Yes ☑ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☐ Yes ☑ No

Explanation: This rule is not effective because section (B) lists additional actions that the Appeals Board may take following a decision. The Department proposes to delete this rule as the actions of the Appeals Board are not governed by these rules.

Rule **Analysis**

R6-13-160 Title: Judicial Review

Objective: The objective of this rule is to explain the rights of the parties to appeal a decision to a court of higher jurisdiction under A.R.S. § 41-1993.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

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Rule **Analysis**

R6-13-161 Title: Availability of TC Payments

Objective: The objective of this rule is to notify the public that assistance payments are contingent upon budgetary appropriation.

- Is this rule effective in meeting the objective? ☑ Yes ☐ No
- Is this rule consistent with other rules and statutes? ☑ Yes ☐ No
- Is this rule enforced as written? ☑ Yes ☐ No
- Is this rule clear, concise, and understandable? ☑ Yes ☐ No

3. Has the Department received written criticisms of the rules within the last five years?

☐ Yes ☑ No

4. Economic, small business, and consumer impact comparison:

In the 2019 5YRR, the Department reported that 15 individuals had participated in the program, benefits paid totaled $8,500, and no additional resources were added or necessary to operate the program. For FY 2024, 22 individuals participated in the program, and benefits paid totaled $6,906. The Department does not anticipate requiring any additional resources to conduct the program, and that the program will continue to have minimal economic impact.

5. Has the agency received any business competitiveness analyses of the rules?

☐ Yes ☑ No

6. Has the agency completed the course of action indicated in the agency's previous five-year review report?

☐ Yes ☑ No

In the previous Five-Year Review Report approved by the Council in April 2019, the Department advised that it would identify rules to repeal or revise as rulemaking for the Department's Appellate Services Administration Consolidated Hearings Rules, 6 A.A.C. 9, Article 3, developed. Rulemaking for 6 A.A.C. 9, Article 3 was approved by the Governor on March 4, 2024, and is under internal review by the Department.

7. 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 believes that the rules impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. These rules do not impose any cost to consumers or small businesses and will be modified to align with current Nutrition Assistance program rules, Cash Assistance program rules, and Appellate Services Administration rules when codified. Updates to the rules identified in this report outweigh any potential costs incurred from the proposed revisions.

8. Are the rules more stringent than corresponding federal laws?

☐ Yes ☑ No

There is no corresponding federal law specific to the Tuberculosis Control Program.

9. 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 Department has determined that A.R.S. § 41-1037 does not apply to these rules because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to update the rules in 6 A.A.C. 13, Article 1 to align the rules with the Department's current practices and to address issues identified in section 2 of this report. The Department is currently in the process of updating 6 A.A.C. 14, Nutrition Assistance program rules, and 6 A.A.C. 9, Appellate Service Administration, that support the proposed revisions for 6 A.A.C. 13, Article 1. The Department anticipates submitting a Notice of Final Rulemaking for revisions to 6 A.A.C. 13, Article 1 to the Council by March 2025.

Arizona Administrative CODE

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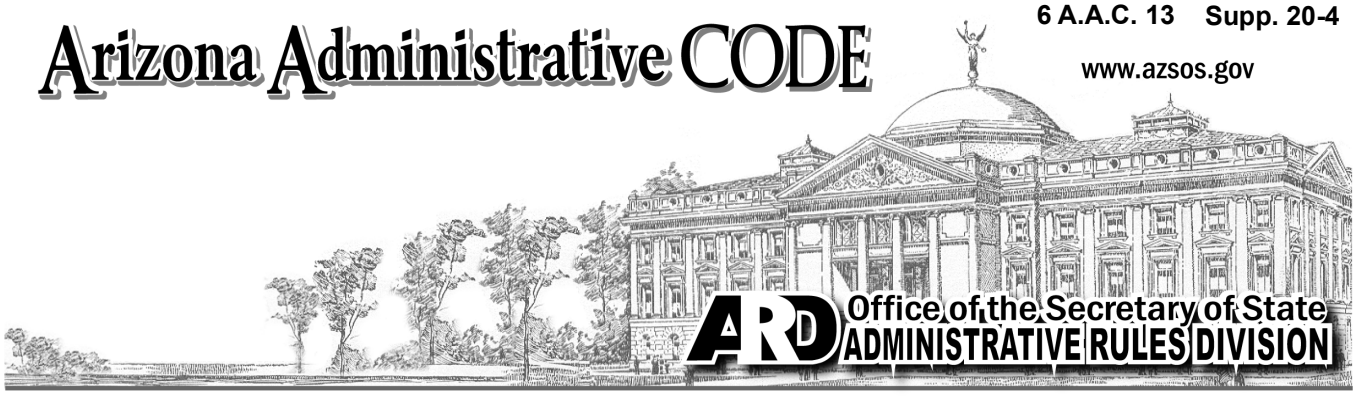

TITLE 6. ECONOMIC SECURITY

CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY - STATE ASSISTANCE PROGRAMS

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 expired in the *Arizona Administrative Code* between the dates of October 1, 2020 through December 31, 2020 (Supp. 20-4).

Questions about expired rules? Contact:

Name: The Governor's Regulatory Review Council
Address: 100 N. 15th Ave #305
Phoenix, AZ 85007
Telephone: (602) 542-2058
Website: https://grrc.az.gov/

The release of this Chapter in Supp. 20-4 replaces Supp. 15-1, 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

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. 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, 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

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, managing rules editor, assisted with the editing of this chapter.

TITLE 6. ECONOMIC SECURITY

CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY - STATE ASSISTANCE PROGRAMS

(Authority: A.R.S. § 41-1954 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 03-3).

Editor's Note: Article headings and Sections of this Chapter were amended, renumbered, repealed, and adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Because these rules are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

Article 1, consisting of R6-13-102 through R6-13-161, made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

Section

ARTICLE 2. EXPIRED

Article 2, consisting of R6-13-201 through R6-13-216 expired under A.R.S. § 41-1056(J) effective August 28, 2014 (Supp. 15-1).

Article 2, consisting of R6-13-201 through R6-13-207, R6-13-209, R6-13-211, R6-13-212, and R6-13-214 through R6-13-216, recodified from A.A.C. R6-3-201 through R6-3-207, R6-3-209, R6-3-211, R6-3-212, and R6-3-214 through R6-3-216, effective February 13, 1996 (Supp. 96-1).

Section

ARTICLE 3. EXPIRED

Article 3, consisting of R6-13-302 through R6-13-321 expired under A.R.S. § 41-1056(J) effective August 28, 2014 (Supp. 15-1).

Article 3, consisting of Sections R6-13-301 through R6-13-307, R6-13-309 through R6-13-311, R6-13-313 through R6-13-316, and R6-13-318 through R6-13-322, recodified from A.A.C. R6-3-301 through R6-3-307, R6-3-309 through R6-3-311, R6-3-313 through R6-3-316, and R6-3-318 through R6-3-322 effective February 13, 1996 (Supp. 96-1).

Section

ARTICLE 4. RESERVED

ARTICLE 5. RESERVED

ARTICLE 6. REPEALED

Article 6, consisting of Sections R6-13-601 through R6-13-604, repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

Article 6, consisting of Sections R6-13-601 through R6-13-604, recodified from A.A.C. R6-3-601 through R6-3-604 effective February 13, 1996 (Supp. 96-1).

Section

ARTICLE 7. REPEALED

Article 7, consisting of Section R6-13-701, repealed by exempt rulemaking at 9 A.A.R. 3966, effective October 20, 2003 (Supp. 03-3).

Article 7, consisting of Section R6-3-701, recodified from A.A.C. R6-3-701 effective February 13, 1996 (Supp. 96-1).

Section

ARTICLE 8. EXPIRED

Article 8, consisting of Sections R6-13-801 through R6-13-809, expired under A.R.S. § 41-1056(J) effective October 7, 2020 (Supp. 20-4).

Article 8, consisting of Sections R6-13-801 through R6-13-809, amended, repealed, or renumbered under an exemption from the provisions of A.R.S. Title 41, Chapter 6, effective August 4, 1997 (Supp. 97-3).

Article 8, consisting of Sections R6-13-801 through R6-13-809, recodified from A.A.C. R6-13-801 through R6-3-809 effective February 13, 1996 (Supp. 96-1).

Section

ARTICLE 9. REPEALED

Article 9, consisting of Sections R6-13-902 through R6-13-911, R6-13-913 through R6-13-917, and R6-13-919 through R6-13-922, repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

Article 9, consisting of Sections R6-13-901 through R6-13-622, recodified from A.A.C. R6-3-901 through R6-3-922 effective February 13, 1996 (Supp. 96-1).

Section

ARTICLE 10. RESERVED

ARTICLE 11. RESERVED

ARTICLE 12. EXPIRED

Article 12, consisting of R6-13-1201 through R6-13-1212 expired under A.R.S. § 41-1056(J) effective August 28, 2014 (Supp. 15-1).

Article 12, consisting of Sections R6-13-1201 through R6-13-1204 and R6-13-1206 through R6-13-1213, recodified from A.A.C. R6-3-1201 through R6-3-1204 and R6-3-1206 through R6-3-1213 effective February 13, 1996 (Supp. 96-1).

Section

CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY - STATE ASSISTANCE PROGRAMS

ARTICLE 1. TUBERCULOSIS CONTROL PROGRAM

R6-13-101. Reserved

R6-13-102. Definitions

The following definitions apply to this Chapter:

1. "Administration" means the Family Assistance Administration of the Department.
2. "Adverse action" means that the Department has:
   a. Denied an application for assistance,
   b. Failed to take action to approve or deny an application within 30 days of the application file date,
   c. Terminated or reduced assistance,
   d. Determined that it overpaid a Tuberculosis Control (TC) payment recipient, or
   e. Denied a request for a waiver of an overpayment.
3. "Applicant" means a person who has directly or through a representative filed an application for TC payments with the Department.
4. "Assistance unit" means a group of persons whose needs, income, resources, and other circumstances the Department considers as a whole for the purpose of determining eligibility and benefit amount for Tuberculosis Control payments.
5. "CA" or "Cash Assistance" means temporary assistance for needy families paid to a recipient for the purpose of meeting basic living expenses under A.R.S. § 46-291 et seq.
6. "Collateral verification" means the use of an agency, organization, or qualified individual who has knowledge of the requested eligibility information, and who the Department may use as a collateral contact when requested to do so or when documented verification is not available to the applicant.
7. "Countable income" means income from every source minus income excluded under R6-13-118.
8. "Department" means the Arizona Department of Economic Security.
9. "FAA" or "Family Assistance Administration" means the administration within the Department's Division of Benefits and Medical Eligibility responsible for providing financial and nutrition assistance to eligible persons and determining eligibility for medical assistance.
10. "FAA Manual" means the policies and procedures used to determine an assistance unit's eligibility for TC payments.
11. "Homestead property" has the same meaning as A.R.S. § 46-101(14).
12. "In-kind income" means the value of goods or services received for work in lieu of the receipt of wages.
13. "Legal claim for support or care" means that the recipient has a duty under the law to look after or provide financially for the person with the legal claim for support or care.
14. "Lump-sum payment" means a single payment, such as retroactive monthly Social Security or other benefits, nonrecurring pay adjustments or bonuses, inheritances, lottery winnings, or personal injury and workers' compensation awards.
15. "Notice of adverse action" means a written notice sent to a recipient when the Department takes adverse action under R6-13-141.
16. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body that includes hearing officers appointed under A.R.S. § 41-1992(A).
17. "Recipient" means a person who receives TC payments.
18. "Resources" means the assistance unit's real and personal property and liquid assets.
19. "TC" means Tuberculosis Control, a program administered by the Department that provides monetary assistance to an assistance unit that includes an adult who is certified by the state Tuberculosis Control Officer to have active tuberculosis or suspected tuberculosis, and that satisfies the eligibility requirements in this Article.
20. "Vendor payment" means a payment from a person or organization that is not a member of an assistance unit to a third party to cover an assistance unit's expenses.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-103. Individuals Who May Qualify for Assistance

A. The following persons are eligible for TC payments only if they meet all financial and nonfinancial eligibility requirements:
   1. An adult who is certified by the state Tuberculosis Control Officer to have active tuberculosis or suspected tuberculosis,
   2. Any person residing with the adult who has a legal claim for support or care from the adult, including:
      a. The adult's spouse; and
      b. A minor child. Also, a child age 18 if attending a secondary school or a high school equivalency program;
      c. A mentally or physically disabled child more than age 18; and
      d. A child who is temporarily absent from the home because the child is attending school, as long as the child returns home at least once a year.

B. A person may receive TC payments only if the individual is not eligible to receive Cash Assistance under A.R.S. Title 46, Chapter 2, Article 5.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-104. Applicant Responsibilities at Initial Application

A. A person shall apply for TC payments by submitting an identifiable Department-approved application to an FAA office in person, by mail, fax, or electronic transmittal.

B. An identifiable application means an application that contains:
   1. The legible name and address of the applicant; and
   2. The signature of the applicant, the applicant's representative, or if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.

C. The application filing date is the date an FAA office receives an identifiable application. If the applicant is eligible, the Department shall pay TC payments calculated from this date.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-105. Department Responsibilities at Initial Application

A. Upon receipt of an identifiable application, the Department shall:
   1. Date stamp the application with the application filing date, and
   2. Schedule an initial eligibility interview with the applicant at:

a. A location that ensures a reasonable amount of privacy, or
b. A homebound applicant's residence, or
3. Schedule a telephone initial eligibility interview.

B. The Department shall assist the applicant in completing the application if necessary. A completed application shall contain:
1. The names of all persons living in the applicant's dwelling and their relationship to the applicant,
2. A request to receive TC payments, and
3. All financial and nonfinancial eligibility information requested on the application form.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-106. Applicant Responsibilities at the Initial Interview

A. The applicant shall attend the interview. A person of the applicant's choosing may also attend and participate in the interview with the applicant.

B. Missed appointments.
1. If the applicant misses a scheduled appointment for an interview, the applicant shall:
a. Request to reschedule the interview no later than close of business on the day of the missed appointment, and
b. Attend the second scheduled appointment.
2. If the applicant fails to comply with the requirements in subsection (B)(1)(a) or (b) without good cause, the Department shall deny the application, and the applicant shall reapply in order to receive TC payments. Good cause for failure to comply with the requirements in subsection (B)(1)(a) or (b) is any unanticipated occurrence that, in the discretion of the Department, made it impossible or unreasonable for the applicant to attend the interview or contact the local office.

C. An applicant for assistance shall:
1. Give the Department complete and truthful information;
2. Inform the Department of all changes in income, assets, or other circumstances affecting eligibility that occur after the date of application for TC payments;
3. Comply with Electronic Benefit Transfer (EBT) requirements; and
4. Comply with any other procedural requirements contained in this Chapter or in state or federal law.

D. An applicant shall provide required verification of financial and nonfinancial eligibility information or request assistance from the Department in obtaining the information.
1. An applicant shall provide the Department with all requested verification of financial and nonfinancial eligibility factors, or request the Department's assistance in obtaining the requested verification, within 10 calendar days from the date of a written request for such information.
2. An applicant shall provide the Department with verification of financial and nonfinancial eligibility factors by submitting to the Department:
a. Documents originating from an agency, organization, or individual qualified to have knowledge of the provided information; or
b. When documents required in subsection (D)(2)(a) are not available to the applicant, the name, telephone number, and address of an agency, organization, or individual qualified to have knowledge of the requested eligibility information that the Department may use as a collateral contact; or
c. When the items in subsections (D)(2)(a) and (b) are not available, a signed written statement from the applicant that describes facts specific to an eligibility factor. The Department shall not accept an applicant's signed written statement as acceptable verification of identity, relationship of household members, or expenses.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-107. Agency Responsibilities at the Initial Interview

A. During the initial interview, a Department representative shall:
1. Discuss how the applicant and the other assistance unit members previously met their needs and why they now need financial assistance;
2. Provide the applicant with written information explaining:
a. The terms, conditions, and obligations of the TC program;
b. Any additional required verification information that the Department requires the applicant to provide in order to conclude the eligibility evaluation;
c. The Department's practice of exchanging eligibility and income information through the State Verification and Exchange System (SVES);
d. The coverage and scope of the TC program;
e. Related services that may be available to the applicant;
f. The applicant's rights, including the right to appeal adverse action;
g. The requirement to report all changes, as specified in R6-13-138, within 10 calendar days from the date the change becomes known; and
h. Other benefits for which any person in the assistance unit is potentially eligible and the requirement that any person in the assistance unit apply for and, if eligible, accept those other benefits;
3. Inform the applicant that the Department shall assist the applicant in obtaining required verification at the request of the applicant, when the verification provided by the applicant is insufficient to complete an eligibility determination, or when the required verification is difficult or impossible for the applicant to obtain;
4. Review the penalties for perjury and fraud, as printed on the application;
5. Review any verification information provided with the application or at the initial interview;
6. Review all ongoing reporting requirements and the potential consequences for failure to make timely reports, including overpayment liability; and
7. Offer an applicant who is a United States citizen the opportunity to register to vote and provide the applicant with a voter registration form if requested.

B. The Department shall obtain independent verification or corroboration of information provided by the applicant when required by law, or when necessary to determine eligibility or benefit level.

C. The Department may verify or corroborate information by any reasonable means, including:
1. Contacting third parties, such as employers;
2. Asking the applicant to provide documented verification, such as billing statements or pay stubs;

3. Asking the applicant to provide a signed written statement that describes facts specific to an eligibility factor when documented or collateral verification is not available;
4. Conducting a computer data match through SVES; and
5. Referring a case to the Department's Office of Special Investigations (OSI) for investigation when:
   a. The Department has a valid reason to suspect that an act has been committed for the purpose of deception, misrepresentation, or concealment of information relevant to a determination of eligibility or the amount of a benefit payment; or
   b. The Department has a valid reason to suspect the commission of theft or fraud related to TC eligibility or payments, or any conduct listed in A.R.S. § 46-215.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-108. Processing the Initial Application

A. The Department shall complete the eligibility determination and benefit level computation within 30 calendar days of the initial application filing date, unless:
1. The applicant withdraws the application. An applicant may withdraw an application at any time before the Department completes an eligibility determination by requesting the withdrawal from the Department either verbally or in writing.
   a. If an applicant verbally requests to withdraw an application, the Department shall:
      i. Document the names of individuals and the types of benefits or services from which the applicant wishes to withdraw, and
      ii. Deny the application and notify the applicant.
   b. A withdrawal is effective as of the date of initial application.
   c. When an applicant withdraws an application, an applicant may file a new application to request TC payments.
2. The applicant dies. If an applicant dies while the application is pending, the Department shall deny the application.
3. The Department is aware of a delay in receiving verification of a required eligibility factor. In this case, the Department shall assist the applicant in obtaining the required verification, even if the delay extends beyond 30 days.

B. The Department shall deny an application and send the applicant a written notice of denial that shall include an explanation of appeal rights when the applicant fails to:
1. Complete the application under R6-13-105(B);
2. Complete an eligibility interview under R6-13-106;
3. Cooperate with all required Department procedures without good cause; however, the Department shall not deny the application for this reason unless the Department has advised the applicant of these procedural requirements in writing;
4. Meet all of the mandatory financial and nonfinancial eligibility criteria used to establish eligibility for the TC program; or
5. Meet the verification requirements in R6-13-106(D).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-109. Case Record

A. The case record shall contain all data collected or used by the Department in evaluating and determining eligibility and benefit amount.

B. The Department shall maintain a case record for every TC applicant or recipient. The case record shall include all documents maintained or stored in any format.

C. Except as otherwise provided in subsections (D) and (E), the Department shall retain the case record for a period of three years after the last date the Department denied TC assistance to an applicant or terminated TC assistance to a recipient.

D. The Department shall retain a case record that contains an unpaid overpayment until:
1. The overpayment is paid back in full, or
2. The Department no longer requires the assistance unit to repay the overpayment.

E. The Department shall retain a case record that includes a disqualification imposed under A.R.S. § 13-3418, an Intentional Program Violation (IPV), or any other disqualification or sanction that prohibits the receipt of assistance.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-110. Confidentiality

The Department shall maintain the confidentiality of a TC applicant's or recipient's records and limit the release of safeguarded information to the Department of Health Services and as prescribed under 6 A.A.C. 12, Article 1 and 9 A.A.C. 6, Article 1.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-111. Manuals

The Department shall make the FAA Manual, as defined in R6-13-102, available to the public on the Department's web site, and each FAA office shall make the FAA Manual accessible for public inspection during regular business hours.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-112. Nonfinancial Eligibility Determination

A. Age. An applicant for TC payments shall be at least 18 years of age.

B. Identity. An applicant for TC payments shall provide the Department with verification that reasonably establishes the applicant's identity.
1. Verification that reasonably establishes identity includes:
   a. A driver license or state-issued identification card that contains a photo of the applicant;
   b. Documents such as the applicant's birth certificate, school identification card, citizenship and immigration documents, identification card from health benefits or other social service programs, wage stubs, work identification card, voter registration card, or other similar documents; or
   c. Collateral verification, as defined at R6-13-102, from an individual who shall not benefit from the applicant's receipt of TC payments.
2. An applicant's written statement is not sufficient verification of identity.

C. Tuberculosis Certification. An applicant must be certified by the state Tuberculosis Control Officer to have active or suspected tuberculosis.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-113. Resource Limitations

A. An applicant is not eligible for TC payments if the applicant has resources in excess of the following, after applying the exclusions in subsection (B):
1. $1000 for an assistance unit consisting of only the applicant.
2. $1400 for an assistance unit consisting of the applicant and the applicant's spouse.

B. The Department shall exclude the equity value of the resources listed below:
1. The homestead property of the assistance unit, as defined in R6-13-102, not to exceed a current equity of $50,000;
2. Household furnishings that the assistance unit members use in their residence and personal effects essential for day-to-day living;
3. The current equity value up to $1500 of one vehicle in the assistance unit. When two or more vehicles are owned, the Department shall apply the exclusion to the vehicle with the highest equity value. Jointly owned vehicles with ownership records containing the word "or" between the owners' names are available in full to each owner unless it can be proven by the assistance unit member that the vehicle is not available to him or her or not in the assistant unit member's possession. When more than one owner is a member of an assistance unit, the equity value of the resource is counted only once;
4. Funds established in connection with settling liability claims concerning Agent Orange death or disability; and
5. Any other resource specifically excluded by law.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-114. Resource Verification

The Department shall verify all resources.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-115. Availability and Ownership of Resources

A. The Department shall consider a resource as countable to the assistance unit only when the resource is legally and physically available or in the possession of the assistance unit member.

B. The Department shall consider the availability of property to the assistance unit based on the type of ownership.
1. The sole and separate property of one spouse is available to the other spouse only when the spouse/owner makes the property available. A resource shall be considered sole and separate property only when obtained in one of the following ways:
   a. Before the present marriage, or
   b. At any time by gift or inheritance.
2. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names are deemed available when all owners can be located and consent to disposal of the resource, except that such consent is not required when all owners are members of the assistance unit.

C. The Department considers the following resources unavailable to the assistance unit:
1. Any resource owned solely by a spouse who is receiving Supplemental Security Income (SSI) paid by Title XVI of the Social Security Act.
2. Resources disputed in divorce proceedings or in probate matters.
3. Real property situated on a Native American reservation.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-116. Nonrecurring Lump-sum Payments

A. The Department shall count nonrecurring lump-sum payments, as defined in R6-13-102, as a resource in the month received.

B. The Department shall count any part of a lump-sum payment that recurs in future months as income in the month received.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-117. Treatment of Income; Overview

A. "Income" shall include the following when actually received by the assistance unit:
1. Gross earned wages from public or private employment before any deductions;
2. In-kind income, as defined in R6-13-102;
3. For self-employed persons, the sum of gross business receipts minus business expenses;
4. Unearned monetary gains such as benefits or assistance grants, minus any deductions to repay prior overpayments or attorney fees; and
5. A prorated share of any Cash Assistance program benefit received by the applicant's spouse.

B. In determining eligibility, the Department shall consider all gross income available to the assistance unit, except those types of income excluded under R6-13-118.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-118. Income Exclusions

The Department shall not count the types of income in this Section when determining the income available to an assistance unit.
1. One-half of the countable income of the applicant's spouse;
2. One-half of the prorated share of any Cash Assistance program benefit received by the applicant's spouse;
3. Loans;
4. Educational grants or scholarships;
5. Income tax refunds;
6. The value of Nutrition Assistance (NA) program benefits and benefits from the Special Supplemental Food Program for Women, Infants, and Children (WIC);
7. Energy assistance payments or allowances provided under any federal, state, or local law, including Negative Rent Utility Payments issued by the Department of Housing and Urban Development for the purpose of energy assistance;
8. Vendor payments, as defined in R6-13-102;
9. Vocational rehabilitation program payments made as reimbursements for training-related expenses, subsistence and maintenance allowances, and incentive payments that are not intended as wages;
10. Agent Orange payments;
11. Burial benefits that are dispersed solely for burial expenses;

12. Reimbursements for work-related expenses that do not exceed the actual expense amount;
13. Insurance payments issued to repay a specific bill, debt, or estimate that cannot be used to meet basic daily needs such as housing, food, or other personal expenses;
14. Attorney fees that are included in the gross payment of industrial compensation paid under the workers' compensation law or in legal settlements;
15. In-kind income, as defined in R6-13-102;
16. Earned income received from employment through the Workforce Investment Act (WIA), including earnings received from on-the-job-training; and
17. Any other income specifically excluded by applicable state or federal law.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-119. Determining Income Eligibility and a Cash Benefit Amount for an Assistance Unit

A. To determine the countable monthly income of an assistance unit, the Department shall:
1. Calculate a countable monthly gross income amount using the methods listed in R6-13-120, and
2. Calculate a countable monthly net income by subtracting the applicable earned income deduction in R6-13-123 from the countable monthly gross income.

B. The Department shall determine the cash benefit amount by subtracting the countable monthly net income from the TC Payment Standard for the number of eligible TC recipients in the assistance unit as prescribed in R6-13-124.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-120. Determining Monthly Gross Income

A. The Department shall calculate an assistance unit's countable monthly gross income by converting countable income received other than monthly into a monthly amount using the methods in R6-13-121.

B. The Department shall include in its calculation all gross income from every source available to the assistance unit as provided in R6-13-117, unless specifically excluded in R6-13-118 or by federal or state law.

C. The Department shall include in its calculation income that the assistance unit has received and reasonably expects to receive in a benefit month and that is based on the Department's reasonable expectation and knowledge of the assistance unit's current, past, and anticipated future circumstances.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-121. Methods to Determine Monthly Income

A. The Department shall convert income received in a regular amount on an ongoing basis into a monthly amount as follows:
1. Multiply weekly amounts by 4.3,
2. Multiply biweekly amounts by 2.15,
3. Multiply semimonthly amounts by 2,
4. Divide quarterly amounts by 3,
5. Divide semiannual amounts by 6, and
6. Divide annual amounts by 12.

B. Averaging income.
1. The Department shall average income for an assistance unit that receives income:
   a. Irregularly; or
   b. Regularly, but from sources or in amounts that vary.
2. When using this method, the Department shall add together income from a representative number of weeks or months and then divide the resulting sum by the same number of weeks or months.

C. Prorating income.
1. Except as provided in subsection (C)(2), the Department shall prorate income when an assistance unit receives income from a fixed-term employment contract in the following manner:
   a. Income is prorated over the number of months the contract is intended to cover, unless the contract specifies piecemeal or hourly income.
   b. Applicable earned income disregards apply as if the assistance unit received the prorated amounts in each month of the contract.
2. The Department shall count income in the month received using the income conversion methods in subsections (A) and (B) when the contract specifies that the assistance unit will receive income on a piecemeal or an hourly basis.

D. Actual income. The Department shall use the actual income of an assistance unit that:
1. Receives or reasonably expects to receive less than a full month's income from a new source,
2. Receives or reasonably expects to receive less than a full month's income from a terminated source of income, or
3. Is paid daily.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-122. Income Verification

The Department shall verify all income as provided in R6-13-107 before determining eligibility and benefit amount.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-123. Earned Income Deduction

For the purpose of determining the countable monthly net income in R6-13-119(A)(2) and for use in the TC Payment Standard Test as provided in R6-13-124, the Department shall deduct a $24 work expense deduction from the countable monthly earned income of each employed person in the assistance unit.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-124. Determining Income Eligibility and Cash Benefit Amount

A. To determine income eligibility for a TC cash benefit, the Department shall:
1. Establish whether to use an A-1 Standard or an A-2 Standard shelter cost factor to complete the financial determination.
   a. The Department shall use the A-1 Standard when:
      i. The assistance unit pays, or has an obligation to pay, all or part of the shelter costs for the place in which assistance unit members reside. Shelter costs include rent, mortgage, and property taxes;
      ii. The assistance unit members reside in subsidized public housing; or
      iii. A member of the assistance unit works in exchange for rent.

b. The Department shall use the A-2 Standard:
i. For all circumstances not covered under subsection (A)(1)(a), or
ii. When an organization or a person who is not a member of the assistance unit pays shelter costs for three consecutive months or longer.

2. Conduct a TC Payment Standard Test.
a. Using the size of the assistance unit and the applicable A-1 or A-2 Standard, the Department shall compare the countable monthly net income to the applicable maximum TC cash benefit amount shown on the TC Payment Standard chart in subsection (A)(3).
b. If the countable monthly net income is at least one dollar less than the TC maximum cash benefit amount, the household is eligible for TC benefits. If the countable monthly net income is equal to or greater than the TC maximum cash benefit amount, the assistance unit is ineligible for TC benefits.

3. The TC Payment Standard Chart.

Number of Individuals	Maximum Monthly TC Cash Benefit For A-1 Standard (Based on 0 Countable Income)	Maximum Monthly TC Cash Benefit For A-2 Standard (Based on 0 Countable Income)
1	$173	$108
2	$233	$145
3	$293	$183
4	$353	$220
5	$412	$258
6	$472	$295
Each additional	$60	$38

B. To determine the amount of the cash benefit payment:
1. The Department shall deduct the countable monthly net income from the maximum cash benefit amount, as shown in the chart in subsection (A)(3), and round the difference down to the next whole dollar. The Department shall pay that amount to the assistance unit.
2. The Department shall prorate the initial month's benefits by the number of days remaining in the month from the application filing date.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-125. Benefit Payments
A. The Department shall pay benefits to an assistance unit for each month in which the Department determines it to be eligible.
B. The Department shall make benefits available no later than the 30th day following the date of application for the initial month, and on the first day of each month for which the assistance unit is eligible thereafter.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-126. Payment Method
The Department shall provide benefit payments by making direct deposits into:
1. An Electronic Benefit Transfer (EBT) account established for the assistance unit by the Department, or
2. A financial institution account established by the recipient.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-127. EBT Card Issuance
A. The Department shall authorize access to an EBT account to:
1. The recipient; or
2. An EBT Alternate Card Holder, as provided in R6-13-128.

B. The Department shall:
1. Provide the recipient with a brochure that explains EBT usage,
2. Inform the recipient that the EBT card will be issued to the recipient by mail,
3. Provide the recipient with the EBT provider's Customer Service Hotline telephone number in order for the recipient to obtain a Personal Identification Number (PIN) and to report EBT account problems, and
4. Inform the recipient about the availability of TC Direct Deposit into an open banking account and the process for establishing Direct Deposit.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-128. EBT Alternate Card Holder
A recipient may designate up to two EBT Alternate Card Holders who shall have full access to the TC benefit available in the EBT account. The EBT Alternate Card Holder shall:
1. Receive his or her own EBT card by mail, and
2. Contact the EBT provider's Customer Service Hotline telephone number in order to obtain a Personal Identification Number (PIN).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-129. Change in Arizona Residency
When an assistance unit moves to another state, it is entitled to any benefits remaining in its EBT account. The assistance unit may obtain benefits by accessing the account with the EBT card before leaving Arizona or at an Automated Teller Machine (ATM) displaying the QUEST symbol in the assistance unit's new state of residence.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-130. Replacing Lost, Stolen, or Damaged Cards
The assistance unit shall report a lost, stolen, or damaged EBT account access card as soon as possible, either by telephone to the EBT 24-hour Customer Service Hotline or to the Department during normal business hours.
1. Any funds removed from an EBT account prior to the assistance unit's reporting the card as lost or stolen will not be replaced.
2. When the client reports a lost, stolen, or damaged EBT account access card by telephone to the EBT 24-hour Customer Service Department, the EBT 24-hour Customer Service Department shall deactivate the EBT account access card and shall issue a new card by mail.
3. The Department shall issue a replacement card when the recipient reports having not received a new EBT account access card by mail by the close of business on the fourth

workday following the date the recipient requested a replacement card from the EBT 24-hour Customer Service Department.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-131. Inactive Accounts; Unused Benefits
The assistance unit shall retain the right to access the EBT account for one year from the original date of benefit availability, regardless of the status of the TC case.

1. If the assistance unit does not access an EBT account for 60 days, the Department shall notify the assistance unit in writing. The notice shall state that immediate access to the EBT account will terminate in 30 days unless the assistance unit contacts the Department or accesses the EBT account.
2. The assistance unit shall lose immediate access to any benefits in an EBT account that has been inactive for 90 days. To regain access to these benefits, the assistance unit shall contact the Department and request that it reinstate the assistance unit to the EBT account.
3. If the assistance unit has not accessed benefit payments in an EBT account for 365 days after the original date of availability, the Department shall recoup the benefits, and the assistance unit shall lose all rights to regain those benefits.
4. Upon the death of a TC payment recipient, the Department shall recoup from the EBT account any TC payments paid to the recipient after the month of the recipient's death.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-132. Supplemental Payments

A. The Department shall correct underpayments of TC assistance by issuing the assistance unit a supplemental payment regardless of whether the underpaid individual is eligible on the date the supplemental payment is issued.

B. The Department shall not count such supplemental payments as a resource or as income.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-133. Overpayments: Date of Discovery; Collection
An overpayment exists when an assistance unit receives a TC payment that exceeds the amount the assistance unit was eligible to receive.

1. The Department shall pursue collection of all overpayments under A.R.S. § 46-213.
2. The Department shall send the recipient a notice of overpayment within 90 days of the date of discovery. The date of discovery is the date the FAA has all of the information necessary to accurately calculate a potential overpayment and writes an overpayment report to the Department's Office of Accounts Receivable and Collections (OARC).
3. If the FAA suspects that fraudulent activity caused the overpayment, the FAA shall refer the potential overpayment to the Department's Office of Special Investigations (OSI) for further investigation and potential prosecution. The overpayment report may be delayed pending the outcome of the OSI investigation.
4. The Department's failure to comply with the time-frame in subsection (2) shall not affect the validity or collection of the overpayment.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-134. Methods of Collection and Recoupment

A. When an overpaid assistance unit is currently receiving benefits, the Department shall seek recovery using one or more of the following repayment methods:
1. Offset against any amounts underpaid to the assistance unit and due in the current month;
2. Cash payments;
3. Reduction in current benefits in an amount not to exceed 10% of the assistance unit's monthly payment, unless the assistance unit desires a larger reduction; or
4. A combination of the above methods.

B. If the assistance unit is not receiving benefits, the Department shall pursue recovery by appropriate action under state law.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-135. Overpayment Calculation Date
When determining an overpayment amount, an assistance unit's overpayment period begins in one of the following:

1. The benefit month for which an initial TC payment is issued, when the assistance unit was ineligible for the amount of assistance paid; or
2. The first day of the second month following the month in which a change that caused the overpayment of the TC payment occurred.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-136. Completion of Treatment
When the Department of Health Services notifies the FAA that an individual receiving TC payments has completed treatment for active or suspected tuberculosis, that individual is no longer eligible for TC payments.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-137. Eligibility Review

A. The Department shall complete a review of all eligibility factors for each assistance unit at least once every six months. The first eligibility review shall begin in the fifth month following the first month of TC eligibility.

B. The Department shall mail, or otherwise transmit as provided by law, the recipient a notice 30 days prior to the Department's review date advising the recipient of the need for a review. The recipient shall file an application and complete a review interview by the date specified on the notice.

C. The Department shall schedule and conduct a review interview in the same manner as an initial interview, described in R6-13-106.

D. The Department shall verify the assistance unit's resources and income and any eligibility factors that have changed or are subject to change. The Department shall also verify with the state Tuberculosis Control Officer that the individual continues to have active or suspected tuberculosis and that the individual continues to receive treatment for that condition. The

Department may verify other factors if current verification is not in the case file.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-138. Requirement to Report Changes

A. The assistance unit shall report, verbally or in writing, all changes that have the potential to affect eligibility or the benefit amount within 10 days from the date the change becomes known. This includes changes to any of the following:
1. Residential address;
2. Shelter expenses to establish the applicable A-1 or A-2 shelter cost factor used to complete the financial eligibility determination, described in R6-13-124;
3. Sources and amounts of income, financial assistance, or any other assistance that provides help to the assistance unit members in meeting their needs;
4. Disability and employability status of the TC payment recipient;
5. Approval or denial of federal disability benefits by the Social Security Administration;
6. Individuals residing in the home; and
7. Types, sources, and amounts of resources.

B. The assistance unit shall provide any verification of changes requested in writing by the Department on or before the verification due date specified on the Department's request for verification, using the verification methods prescribed in R6-13-106.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-139. Agency Responsibilities for Processing Changes

A. The Department shall redetermine eligibility for TC benefits and, if applicable, recalculate a TC benefit amount when the assistance unit reports a change directly to the Department, when someone acting on behalf of the assistance unit reports a change, or if an automated system report reveals a change.

B. When a change results in either a decrease in the cash benefit or renders the assistance unit ineligible for TC payments, the Department shall effect the change within 10 days from the date the change was reported, when possible, using one of the following methods:
1. Reduce the benefit or terminate eligibility for the first possible month allowing time for notice of adverse action requirements prescribed in R6-13-141, without further verification, if there is sufficient and reliable information to effect the change; or
2. Attempt to obtain verification by the 10th day from the date the change was reported when there is not sufficient information to effect the change without additional verification. The Department shall:
   a. Send the assistance unit a written request for verification with a due date that is the 10th day from the date the verification is requested; and
   b. Contact third parties to obtain the needed verification, when possible.

C. If the assistance unit fails to provide the requested verification by the due date and does not request assistance from the Department to obtain the verification, the Department shall terminate TC payments for the first possible month, allowing time for notice of adverse action requirements prescribed in R6-13-141.

D. When a reported change results in an increase in the cash benefit, the Department shall effect the increase only after the change has been verified. The Department shall send the assistance unit a written request for verification with a due date that is 10 days from the date the Department mails the written request, or otherwise transmits the written request as provided by law.
1. When the assistance unit provides the requested verification on or before the due date, the Department shall increase the cash benefit for the first monthly payment issued after the date the change is reported.
2. When the assistance unit provides the requested verification after the due date, the Department shall increase the cash benefit for the first monthly payment issued after the date the verification is received.
3. When the assistance unit does not provide the requested verification, the Department shall not increase the cash benefit but shall continue issuing the current cash benefit amount.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-140. Reinstatement of Terminated Benefits

A. The Department shall reinstate terminated benefit payments within 10 calendar days when:
1. The Department terminated benefit payments in error,
2. The Department receives a court order or administrative hearing decision mandating reinstatement, or
3. The recipient timely files a request for fair hearing and requests continued benefits as provided in R6-13-146.

B. When a six-month review under R6-13-137 was not completed due to the termination of benefits, the Department shall conduct the review at the earliest opportunity following reinstatement.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-141. Notice of Adverse Action

A. A notice of adverse action shall contain:
1. The adverse action taken,
2. The reason for the adverse action,
3. The effective date of the adverse action,
4. The name and telephone number of the Administration office to contact for additional information,
5. The telephone number for free legal assistance, and
6. The recipient's appeal rights.

B. Timely Notice of Adverse Action.
1. When the Department intends to reduce or terminate benefits, the Department shall provide the assistance unit with a timely notice of adverse action under this subsection, unless the reduction or termination is for one of the reasons in subsection (C).
2. The Department shall mail the notice of adverse action by first-class mail, postage prepaid, or otherwise transmit the notice as provided by law, to the last known residential address for the assistance unit or other designated address for the assistance unit so that the Department can reasonably expect the assistance unit to receive the notice at least 10 days prior to the first day of the month in which the reduction or termination of benefits shall occur.

C. The Department may dispense with timely notice, but shall mail, first-class, postage prepaid, or otherwise transmit as provided by law, the notice of adverse action to the last known residential address for the assistance unit or other designated address for the assistance unit, so that the Department can reasonably expect the assistance unit to receive the notice no later

than the first day of the month in which the reduction or termination of benefits shall occur, when:

1. A recipient makes a written or verbal request for termination,
2. A recipient is ineligible because of admission to a facility where the recipient's needs are being met. This includes:
   a. Incarceration,
   b. Long-term hospitalization when the recipient is not expected to return to the home, and
   c. Institutionalization in a skilled nursing care or intermediate care facility,
3. The recipient's address is unknown,
4. The Department has verified that another state has accepted the recipient for assistance, or
5. An administrative tribunal or court of law has found that the recipient committed an Intentional Program Violation (IPV).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-142. Entitlement to a Hearing; Appealable Action

A. An applicant or recipient who appeals an adverse action is entitled to request an administrative hearing to challenge the action as provided in this Article.

B. An adverse action resulting from a uniform change in federal or state law is not appealable unless the Department misapplies the law to the person seeking the hearing.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-143. Computation of Time

A. In computing any time period:
1. "Day" means a calendar day;
2. "Workday" means Monday through Friday, excluding Arizona state holidays;
3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and
4. The Department counts the last day of the designated time period unless it is a Saturday, Sunday, or Arizona state holiday.

B. The Department deems a document that the Department mailed as given to the addressee on the date mailed, or otherwise transmitted as provided by law, to the addressee's last known address. The Department presumes that the mailing date is the date shown on the document unless the facts show otherwise.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-144. Request for Hearing: Form; Time Limits; Presumptions

A. A person who wishes to appeal an adverse action shall make a verbal or written request for a hearing to the FAA within 30 days of the date on the notice or letter advising the person of the adverse action. The FAA shall provide a form for this purpose and, upon request, shall help an appellant complete the form. If the person makes a verbal request for hearing, the FAA shall reduce the appeal and the stated reasons for the appeal to writing, record the date of the verbal request, and forward the request to the Office of Appeals.

B. An appellant shall include the following information in the request for hearing:
1. Name, address, and telephone number of the individual subject to the adverse action;
2. A description of the adverse action that is the subject of the appeal;
3. The date of the notice of adverse action; and
4. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

C. The Department shall process an appeal even if the request does not include all the information listed in subsection (B), as long as the request contains sufficient information for the Department to determine the identity of the appellant.

D. The Department deems a request for hearing filed on:
1. The mailing date as shown by the postmark if the appellant sent the request by first-class mail, postage prepaid, through the United States Postal Service to the Department; or
2. The date the Department actually receives the request, if not mailed as provided in subsection (D)(1).

E. A document is timely filed if the sender of the document can demonstrate that any delay in submission was due to any of the following reasons:
1. Department error or misinformation,
2. Delay or other action by the United States Postal Service, or
3. Delay due to the appellant's changing mailing addresses at a time when the appellant had no duty to notify the Department of the change.

F. When the Office of Appeals receives a request for a hearing that the appellant did not timely file, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excusable, as provided in subsection (E).

G. An appellant whose appeal the Office of Appeals denies as untimely is entitled to petition for review of this issue as provided in R6-13-158.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-145. Family Assistance Administration: Transmittal of Appeal

A. The FAA shall notify the Office of Appeals of a request for hearing within two workdays of receipt of the request.

B. No less than 10 workdays before the scheduled hearing date, unless otherwise ordered, the FAA shall send the Office of Appeals and the appellant a prehearing summary. The prehearing summary shall include, at a minimum:
1. The appellant's name,
2. The appellant's Social Security number,
3. The local office that issued the adverse action under appeal,
4. A brief summary of the facts leading to the adverse action, and
5. The legal or Administration policy basis for the adverse action.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-146. Stay of Adverse Action Pending Appeal

A. The Department shall stay the implementation of the adverse action until the hearing officer renders a decision on the appeal, if the appellant makes a request to stay the adverse action within 10 days from the date the Department mails the notice of adverse action, or otherwise transmits the notice as provided by law, except in the following circumstances:

1. The appellant expressly waives the delay of adverse action,
2. The adverse action is a result of a uniform change in federal or state law,
3. The appellant is requesting continued benefits when the time period for which the Department has approved benefits has expired,
4. The Department has denied the appellant's initial or renewal application,
5. The appeal challenges an action that is not appealable according to R6-13-142(B),
6. The appellant withdraws the request for hearing, or
7. The appellant fails to appear for the hearing without good cause.

B. The Department shall extend the 10-day time period in subsection (A) if the appellant establishes good cause. Good cause includes any unanticipated occurrence that, in the discretion of the Department, made it impossible or unreasonable for the appellant to make the request as specified in subsection (A).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-147. Hearings: Location; Notice; Time

A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing or permit a witness, upon request, to appear telephonically.

B. Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.

C. The Office of Appeals shall mail, or otherwise transmit as provided by law, a notice of hearing to all interested parties at least 20 days before the scheduled hearing date.

D. The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
2. The name of the hearing officer;
3. A general statement of the issues involved in the case;
4. A statement listing the parties' rights as specified in R6-13-152; and
5. A general statement of the hearing procedures.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-148. Postponing the Hearing

A. A party may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the Office of Appeals should postpone the hearing. Good cause exists if circumstances beyond the party's reasonable control make it unduly difficult or burdensome for the party or the party's counsel to attend the hearing on the scheduled date.

B. Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least five workdays before the scheduled hearing date. The Office of Appeals is entitled to deny an untimely request. Emergency circumstances mean circumstances:
1. Beyond the reasonable control of the party,
2. That did not arise until after the five-day period, and
3. That the party could not reasonably anticipate.

C. When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall mail, or otherwise transmit as provided by law, the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-149. Hearing Officer: Duties and Qualifications

A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.

B. The hearing officer shall:
1. Administer oaths and affirmations;
2. Regulate and conduct hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all participants;
3. Ensure consideration of all relevant issues;
4. Exclude evidence that is not competent, relevant, or material, or that is unduly repetitious from the record;
5. Request, receive, and incorporate relevant evidence into the record;
6. Subpoena witnesses or documents needed for the hearing upon compliance with the requirements of R6-13-151;
7. Open, conduct, and close the hearing;
8. Rule on the admissibility of evidence offered at the hearing;
9. Direct the order of proof at the hearing;
10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:
    a. Disqualify himself or herself from the case,
    b. Continue the hearing to a future date or time,
    c. Reopen the hearing to take additional evidence prior to the entry of a final decision,
    d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article,
    e. Exclude nonparty witnesses from the hearing room; and
11. Issue a written decision resolving the appeal.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-150. Change of Hearing Officer; Challenges for Cause

A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that shall include:
1. The case name and number,
2. The hearing officer assigned to the case, and
3. The name and signature of the party requesting the change.

B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the scheduled hearing date.

C. A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).

D. A party may not request a change of hearing officer once the hearing officer has heard and decided a substantive motion except as provided in subsection (E).

E. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.

F. A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.

G. The hearing officer being challenged for cause may hear and decide the challenge unless:

1. A party specifically requests that another hearing officer make the determination, or
2. The assigned hearing officer disqualifies himself or herself from the decision.

H. The Office of Appeals shall transfer the case to another hearing officer when:
1. A party requests a change as provided in subsections (A) through (D); or
2. The hearing officer is removed for cause, as provided in subsections (E) through (G).

I. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-151. Subpoenas

A. A party who wishes to have a witness testify at a hearing or to offer a particular document or item in evidence shall first attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-13-152(2).

B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence.

C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
1. The case name and number;
2. The name of the party requesting the subpoena;
3. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item;
5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence; and
6. A description of the party's efforts to obtain the witness or evidence by voluntary means.

D. A party who wants a subpoena shall ask for the subpoena at least five days before the scheduled hearing date.

E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.

F. The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, electronic mail, or interoffice mail.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-152. Parties' Rights

The claimant and the Department have the following rights:
1. The right to request a postponement of the hearing as provided in R6-13-148;
2. The right to copy before or during the hearing any documents in the Department's file on the appellant and documents the Department might use at the hearing, except documents shielded by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;
3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-13-150;
4. The right to request subpoenas for witnesses and evidence as provided in R6-13-151;
5. The right to present the case in person or through an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, as provided in R6-13-158 and R6-13-160 if dissatisfied with a decision reached by the Office of Appeals.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-153. Withdrawal of an Appeal

A. An appellant may withdraw an appeal at any time prior to the time the hearing officer renders a decision.
1. An appellant may withdraw an appeal verbally, either in person or by telephone. The Department may record the audio of the withdrawal.
2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.

B. The Office of Appeals shall dismiss the appeal upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or upon receipt of a statement of withdrawal made on the record when the hearing officer has accepted the withdrawal.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-154. Failure to Appear; Default; Reopening

A. If an appellant fails to appear at the scheduled hearing, the hearing officer shall:
1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
2. Rule summarily on the available record; or
3. Adjourn the hearing to a later date and time.

B. The hearing officer shall not enter a default if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record.

C. A party who did not appear at a scheduled hearing date may file, no more than 10 days after a dismissal date, a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.

D. The hearing officer shall set the matter for a hearing to determine whether the appellant had good cause for failing to appear.

E. If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-13-147.

F. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists

when the nonappearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the meaning applied to "excusable neglect" as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-155. Hearing Proceedings

A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.

B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.

C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(D).

D. The Office of Appeals shall record all hearings. The Office of Appeals need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.

E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.

F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal's recording of the hearing shall constitute the official record of the hearing.

G. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.

H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.

I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence.

J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.

K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.

L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-156. Hearing Decision

A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.

B. The hearing decision shall include:
1. Findings of fact concerning the issue on appeal,
2. Citations to the law and authority applicable to the issue on appeal,
3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions,
4. The name of the hearing officer,
5. The date of the decision, and
6. A statement of further appeal rights and the time period for exercising those rights.

C. The Office of Appeals shall mail, or otherwise transmit as provided by law, a copy of the decision to each party's representative or to the party if the party is unrepresented.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-157. Effect of the Decision

A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.

B. If the hearing officer vacates, sets aside, or reverses the Administration's decision to take adverse action, the Administration shall not take the action or shall reverse any adverse action taken unless and until the Appeals Board, under A.R.S. § 23-672, or Arizona Court of Appeals issues a decision affirming the adverse action.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-158. Further Administrative Appeal

A. A party can appeal an adverse decision issued by a hearing officer to the Department's Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition for review with the Office of Appeals within 15 days of the mailing date, or the transmittal date when transmitted in a manner other than by mail, as provided by law, of the hearing officer's decision.

B. The petition for review shall:
1. Be in writing,
2. Describe why the party disagrees with the hearing officer's decision, and
3. Be signed and dated by the party or the party's representative.

C. The party petitioning for review shall mail a copy of the petition to all other parties.

D. The Appeals Board is not obligated to have the proceedings of the hearing transcribed.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-159. Appeals Board

A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.

B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information will help in deciding the appeal. The Appeals Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required or any further issues for consideration.

C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer and any further evidence or testimony presented to the Appeals Board.

D. The Appeals Board shall issue and mail, or otherwise transmit as provided by law, to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The decision of the Appeals Board shall specify the parties' rights to further review and the time for filing a request for review.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-160. Judicial Review
Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-161. Availability of TC Payments
The availability of TC payments is subject to budgetary restrictions.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

ARTICLE 2. EXPIRED

R6-13-201. Expired

Historical Note
R6-13-201 recodified from A.A.C. R6-3-201 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-202. Expired

Historical Note
R6-13-202 recodified from A.A.C. R6-3-202 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-203. Expired

Historical Note
R6-13-203 recodified from A.A.C. R6-3-203 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-204. Expired

Historical Note
R6-13-204 recodified from A.A.C. R6-3-204 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-205. Expired

Historical Note
R6-13-205 recodified from A.A.C. R6-3-205 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-206. Expired

Historical Note
R6-13-206 recodified from A.A.C. R6-3-206 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-207. Expired

Historical Note
R6-13-207 recodified from A.A.C. R6-3-207 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-208. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-209. Expired

Historical Note
R6-13-209 recodified from A.A.C. R6-3-209 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-210. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-211. Expired

Historical Note
R6-13-211 recodified from A.A.C. R6-3-211 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-212. Expired

Historical Note
R6-13-212 recodified from A.A.C. R6-3-212 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-213. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-214. Expired

Historical Note
R6-13-214 recodified from A.A.C. R6-3-214 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-215. Expired

Historical Note
R6-13-215 recodified from A.A.C. R6-3-215 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-216. Expired

Historical Note
R6-13-216 recodified from A.A.C. R6-3-216 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

ARTICLE 3. EXPIRED

R6-13-301. Expired

Historical Note
R6-13-301 recodified from A.A.C. R6-3-301 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective August 31, 2004 (Supp. 05-1).

R6-13-302. Expired

Historical Note
R6-13-302 recodified from A.A.C. R6-3-302 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-303. Expired

Historical Note
R6-13-303 recodified from A.A.C. R6-3-303 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-304. Expired

Historical Note
R6-13-304 recodified from A.A.C. R6-3-304 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-305. Expired

Historical Note
R6-13-305 recodified from A.A.C. R6-3-305 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-306. Expired

Historical Note
R6-13-306 recodified from A.A.C. R6-3-306 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-307. Expired

Historical Note
R6-13-307 recodified from A.A.C. R6-3-307 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective August 31, 2004 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-308. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-309. Expired

Historical Note
R6-13-309 recodified from A.A.C. R6-3-309 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-310. Expired

Historical Note
R6-13-310 recodified from A.A.C. R6-3-310 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-311. Expired

Historical Note
R6-13-311 recodified from A.A.C. R6-3-311 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-312. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-313. Expired

Historical Note
R6-13-313 recodified from A.A.C. R6-3-313 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-314. Expired

Historical Note
R6-13-314 recodified from A.A.C. R6-3-314 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-314.01. Expired

Historical Note
R6-13-314.01 recodified from A.A.C. R6-3-314.01 effective February 13, 1996 (Supp. 96-1). R6-13-314.01 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-315. Expired

Historical Note
R6-13-315 recodified from A.A.C. R6-3-315 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

R6-13-316. Expired

Historical Note
R6-13-316 recodified from A.A.C. R6-3-316 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

R6-13-317. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-318. Expired

Historical Note
R6-13-318 recodified from A.A.C. R6-3-318 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-319. Expired

Historical Note
R6-13-319 recodified from A.A.C. R6-3-319 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-320. Expired

Historical Note
R6-13-320 recodified from A.A.C. R6-3-320 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-321. Expired

Historical Note
R6-13-321 recodified from A.A.C. R6-3-321 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-322. Expired

Historical Note
R6-13-322 recodified from A.A.C. R6-3-322 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

ARTICLE 4. RESERVED

ARTICLE 5. RESERVED

ARTICLE 6. REPEALED

Article 6, consisting of Sections R6-13-601 through R6-13-604, repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

R6-13-601. Repealed

Historical Note
R6-13-601 recodified from A.A.C. R6-3-601 effective February 13, 1996 (Supp. 96-1). Section R6-13-601 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

R6-13-602. Repealed

Historical Note
R6-13-602 recodified from A.A.C. R6-3-602 effective February 13, 1996 (Supp. 96-1). Section R6-13-602 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

R6-13-603. Repealed

Historical Note
R6-13-603 recodified from A.A.C. R6-3-603 effective February 13, 1996 (Supp. 96-1). Section R6-13-603 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

R6-13-604. Repealed

Historical Note
R6-13-604 recodified from A.A.C. R6-3-604 effective February 13, 1996 (Supp. 96-1). Section R6-13-604 repealed by final rulemaking at 18 A.A.R. 1863, effective July 10, 2012 (Supp. 12-3).

ARTICLE 7. REPEALED

Article 7, consisting of Section R6-13-701, repealed by exempt rulemaking at 9 A.A.R. 3966, effective October 20, 2003 (Supp. 03-3).

R6-13-701. Repealed

Historical Note
R6-13-701 recodified from A.A.C. R6-3-701 effective February 13, 1996 (Supp. 96-1). Section repealed by exempt rulemaking at 9 A.A.R. 3966, effective October 20, 2003 (Supp. 03-3).

ARTICLE 8. EXPIRED

R6-13-801. Expired

Historical Note
R6-13-801 recodified from A.A.C. R6-3-801 effective February 13, 1996 (Supp. 96-1). Amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-802. Expired

Historical Note
R6-13-802 recodified from A.A.C. R6-3-802 effective February 13, 1996 (Supp. 96-1). Amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-803. Expired

Historical Note
R6-13-803 recodified from A.A.C. R6-3-803 effective February 13, 1996 (Supp. 96-1). Section repealed; new Section R6-13-803 renumbered from R6-13-804 and amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-804. Expired

Historical Note
R6-13-804 recodified from A.A.C. R6-3-804 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-803; new Section R6-13-804 renumbered from R6-13-805 and amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-805. Expired

Historical Note
R6-13-805 recodified from A.A.C. R6-3-805 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-804; new Section R6-13-805 renumbered from R6-13-806 and amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. §

41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-806. Expired

Historical Note
R6-13-806 recodified from A.A.C. R6-3-806 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-805; new Section R6-13-806 renumbered from R6-13-807 and amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-807. Expired

Historical Note
R6-13-807 recodified from A.A.C. R6-3-807 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-806; new Section R6-13-807 renumbered from R6-13-808 and amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-808. Expired

Historical Note
R6-13-808 recodified from A.A.C. R6-3-808 effective February 13, 1996 (Supp. 96-1). Section renumbered to R6-13-807; new Section adopted effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

R6-13-809. Expired

Historical Note
R6-13-809 recodified from A.A.C. R6-3-809 effective February 13, 1996 (Supp. 96-1). Amended effective August 4, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 2766, effective October 7, 2020 (Supp. 20-4).

ARTICLE 9. REPEALED

R6-13-901. Expired

Historical Note
R6-13-901 recodified from A.A.C. R6-3-901 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective August 31, 2004 (Supp. 05-1).

R6-13-902. Repealed

Historical Note
R6-13-902 recodified from A.A.C. R6-3-902 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-903. Repealed

Historical Note
R6-13-903 recodified from A.A.C. R6-3-903 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-904. Repealed

Historical Note
R6-13-904 recodified from A.A.C. R6-3-904 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-905. Repealed

Historical Note
R6-13-905 recodified from A.A.C. R6-3-905 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-906. Repealed

Historical Note
R6-13-906 recodified from A.A.C. R6-3-906 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-907. Repealed

Historical Note
R6-13-907 recodified from A.A.C. R6-3-907 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-908. Repealed

Historical Note
R6-13-908 recodified from A.A.C. R6-3-908 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-909. Repealed

Historical Note
R6-13-909 recodified from A.A.C. R6-3-909 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-910. Repealed

Historical Note
R6-13-910 recodified from A.A.C. R6-3-910 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-911. Repealed

Historical Note
R6-13-911 recodified from A.A.C. R6-3-911 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-912. Expired

Historical Note
R6-13-912 recodified from A.A.C. R6-3-912 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

R6-13-913. Repealed

Historical Note
R6-13-913 recodified from A.A.C. R6-3-913 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-914. Repealed

Historical Note
R6-13-914 recodified from A.A.C. R6-3-914 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-915. Repealed

Historical Note
R6-13-915 recodified from A.A.C. R6-3-915 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-916. Repealed

Historical Note
R6-13-916 recodified from A.A.C. R6-3-916 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-917. Repealed

Historical Note
R6-13-917 recodified from A.A.C. R6-3-917 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-918. Expired

Historical Note
R6-13-918 recodified from A.A.C. R6-3-918 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

R6-13-919. Repealed

Historical Note
R6-13-919 recodified from A.A.C. R6-3-919 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-920. Repealed

Historical Note
Former Rule 3-924; Former Section R6-3-920 repealed, new Section R6-3-920 adopted effective March 26, 1976 (Supp. 76-2). R6-13-920 recodified from A.A.C. R6-3-920 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-921. Repealed

Historical Note
R6-13-921 recodified from A.A.C. R6-3-921 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

R6-13-922. Repealed

Historical Note
R6-13-922 recodified from A.A.C. R6-3-922 effective February 13, 1996 (Supp. 96-1). Section repealed by final rulemaking at 18 A.A.R. 1175, effective June 30, 2012 (Supp. 12-2).

ARTICLE 10. RESERVED

ARTICLE 11. RESERVED

ARTICLE 12. EXPIRED

R6-13-1201. Expired

Historical Note
R6-13-1201 recodified from A.A.C. R6-3-1201 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1202. Expired

Historical Note
R6-13-1202 recodified from A.A.C. R6-3-1202 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1203. Expired

Historical Note
R6-13-1203 recodified from A.A.C. R6-3-1203 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1204. Expired

Historical Note
R6-13-1204 recodified from A.A.C. R6-3-1204 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1205. Expired

Historical Note
Reserved section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1206. Expired

Historical Note
R6-13-1206 recodified from A.A.C. R6-3-1206 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1207. Expired

Historical Note
R6-13-1207 recodified from A.A.C. R6-3-1207 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1208. Expired

Historical Note
R6-13-1208 recodified from A.A.C. R6-3-1208 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1209. Expired

Historical Note

R6-13-1209 recodified from A.A.C. R6-3-1209 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1210. Expired

Historical Note

R6-13-1210 recodified from A.A.C. R6-3-1210 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1211. Expired

Historical Note

R6-13-1211 recodified from A.A.C. R6-3-1211 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1212. Expired

Historical Note

R6-13-1212 recodified from A.A.C. R6-3-1212 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 157, effective August 28, 2014 (Supp. 15-1).

R6-13-1213. Expired

Historical Note

R6-13-1213 recodified from A.A.C. R6-3-1213 effective February 13, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective August 29, 2009 (Supp. 09-4).

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.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.

2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.

3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.

4. Act as agent of the federal government in furtherance of any functions of the state department.

5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.

6. Cooperate with the superior court in cases of delinquency and related problems.

7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.

8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.

9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.

11. Administer any additional welfare functions required by law.

12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.

13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.

14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

36-716. Payment of assistance

A. An afflicted person who is under medical treatment for tuberculosis prior to release for employment and who needs or whose family needs financial assistance shall be referred to the department of economic security for determination of financial assistance eligibility.

B. The department of economic security shall determine and furnish assistance that is necessary to provide adequate support for those who have a legal claim for support or care from the afflicted person and for that person if the tuberculosis control officer or local health officer has approved that person or a member or members of that person's family for assistance.

E-3.

DEPARTMENT OF AGRICULTURE
Title 3 Chapter 10, Articles 2-17

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **Department of Agriculture (ADEQ)**
Title 3, Chapter 10

Summary

This Five Year Review Report (5YRR) from the Department of Agriculture (Department) covers eighty-three (83) rules in Title 3, Chapter 10, across 16 Articles, all rules are related to Produce Safety. The Articles specifically cover:

- **Article 2** -Produce Safety
- **Article 3** -Produce Safety General Provisions
- **Article 4**- Produce Safety Covered Farm and Qualified Exemption
- **Article 5** - Produce Safety Personnel Qualifications and Training
- **Article 6** - Produce Safety Health and Hygiene
- **Article 7** - Produce Safety Agricultural Water
- **Article 8** - Produce Safety Biological Soil Amendments of Animal Origin and Human Waste
- **Article 9** - Produce Safety Domesticated and Wild Animals
- **Article 10** - Produce Safety Growing, Harvesting, Packing and Holding Activities
- **Article 11** - Produce Safety Equipment, Tools, Buildings and Sanitation
- **Article 12** - Produce Safety Sprouts
- **Article 13** - Produce Safety Analytical Methods
- **Article 14** - Produce Safety Records

- **Article 15** - Produce Safety Variances
- **Article 16** - Produce Safety Inspections, Violations and Enforcement
- **Article 17**- Produce Safety Withdrawal of Qualified Exemption

These rules were initially made by exempt rulemaking at 26 A.A.R 681, with an effective date of August 19, 2019. Thus, these rules have not previously had a 5YRR submitted to the council.

Proposed Action

The Department does not have a proposed course of action at this time as a result of the Department stating that the Department intends to maintain the rules as written and that the rules do not need to be amended or expired.

1. Has the agency analyzed whether the rules are authorized by statute?

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 Arizona Department of Agriculture (AZDA) has not completed an impact comparison. The U.S. Food and Drug Administration (FDA) measured costs based on the best available information from government, industry, and academic sources. FDA's Analysis of Economic Impacts – Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption can be found here: (https://www.fda.gov/about-fda/economic-impact-analyses-fda-regulations/summary-regulatory-impact-analysis-standards-growing-harvesting-packing-and-holding-produce-human).

The program is funded through federal funds. The Department has indicated to Council staff that the cost is relative to the size of the farm and type of produce grown.

The Department has also indicated to Council staff that they have evaluated other states that have entered into other agreements. Other states rely on FDA authority to conduct inspections, these mainly consist of smaller states, with the exception of California being a larger state that relies on FDA authority to carry out inspections.

The Department has stated that they prefer to carry out their own inspections because the Department is better equipped to conduct inspections as a result of having increased familiarity with stakeholders and directly working with stakeholders to find specific solutions based on the specific stakeholder within the produce industry. The Department has stated that this has been well received by the produce industry because the FDA has been criticized by local stakeholders of not actually understanding the conditions of Arizona produce facilities and being overly critical without providing solutions that are catered to Arizona stakeholders.

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 states that in 2011, after several years of gathering stakeholder input, the FDA published the final regulations promulgating the Food Safety Modernization Act (FSMA) which includes requirements for regulation of farming operations for the first time in U.S. history. In 2015, the Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption (the Produce Safety Rule) were finalized. The Produce Safety Rule (PSR) establishes, for the first time, science-based minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. The goal is to reduce incidents of food-borne illness/death. These rules shift focus from responding to contamination to preventing contamination, so the benefits outweigh the costs. Additionally, many farms voluntarily participate and comply with other third-party food safety auditing requirements that exceed these rules to gain market access and ensure food safety. The Department believes the rules impose the least burden and costs to people regulated by the rules necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department has not received written criticism of the rules in the past five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department states the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department states the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department states 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?

The Department states that the rules are not more stringent than the Produce Safety Rule 921 CFR Part 112) as authorized under the FDA Food Safety Modernization Act (21 U.S.C. § 2201-2252).

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?

The rules do not require a permit or a license.

11. Conclusion

This 5YRR from the Department covers eighty-three (83) rules across 16 Articles in Title 3, Chapter 10, all related to produce safety. These rules were determined necessary as a result of an agreement between the Department and the U.S. Food and Drug Administration and became effective by an exempt rulemaking with an effective date of August 18, 2019. The rules are effective in meeting their objectives and consistent with other rules and statutes. The Department does not propose a rulemaking to amend these rules at this time.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Executive Deputy Director

Arizona Department of Agriculture

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August 26, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Arizona Department of Agriculture, Title 3, Chapter 10, Articles 2-17, Five Year Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Arizona Department of Agriculture's ("Department") for Title 3, Chapter 10, Articles 2 through 17, which is due August 30, 2024.

The Department reviewed all the rules in Articles 2-17. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J).

The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Teressa Lopez at (602) 542-0945 or tlopez@azda.gov with any questions about this report.

Sincerely,

Paul E Brierley

Paul E. Brierley
Executive Deputy Director

cc: Ed Foster, Assistant Director

Arizona Department of Agriculture
5 YEAR RULE REVIEW REPORT
Chapter 10. Department of Agriculture – Citrus, Fruit and Vegetable Division
Article 2 through 17
August 30, 2024

1. **Authorization of the rule by existing statutes**
General Statutory Authority: A.R.S. § 3-107

Specific Authority: A.R.S. § 3-525, 3-525.01, A.R.S. § 3-525.05, A.R.S. § 3-525.08

2. **The objective of each rule:**

Rule	Objective
R3-10-201	Definitions- Produce Safety: these words and phrases are defined for use in Articles 2 through 17, unless the context otherwise requires. These provide clarity and consistency for those impacted by these rules.
R3-10-302	Applicability: Provides a statement of relevance to those affected.
R3-10-303	Food Safety; Covered Produce: Provided to list the types of products that fall within the department's authority.
R3-10-304	Food Safety; Covered Produce; Exclusions: Provided to list the types of products not within the department's authority.
R3-10-305	Designated Representative; Notice Requirements to the Department- This ensures that farms provide the most current point of contact information for the farm representative that manages the food safety operations on the farm.
R3-10-401	Definitions-Produce Safety Covered Farm and Qualified Exemption: These words and phrases are defined for use in Article 4, unless the context otherwise requires. These provide clarity and consistency for those impacted by these rules.
R3-10-402	Inventory of Farms; Form; Electronic Submission: Allows the department the ability to determine if a farm will be impacted by these rules. It provides the department a list of farms that will be covered by these rules and require regulatory inspections.
R3-10-403	Covered Farm; Exclusion: Allows the department the ability to determine if a farm will be impacted by these rules. It provides the department a list of farms that will be exempt from these rules and do not require regulatory inspections.
R3-10-404	Covered Farm; Qualified Exemption; Modifications: Allows the department the ability to determine if a farm will be impacted by these rules. It provides the department a list of farms that will be qualified exempt, meaning that the farms structure and reach will not likely have an impact to food safety. Once the AZDA determines a farm is qualified exempt they do not require regulatory inspections.
R3-10-405	Qualified Exemption; Eligibility; Modification Requirements: If a farm is determined to be qualified exempt from regulatory inspection, they must still meet some general requirements in the rules in Articles 2, 3, 14 and 16.
R3-10-406	Qualified Exemption; Maintenance of Records: Requires farms that are qualified exempt a requirement to continue to keep and maintain records necessary to demonstrate that the farm satisfies the criteria for qualified exemption.
R3-10-407	Compliance Dates; Covered Farms; Agricultural Water: This outlines the federal timeline for compliance for farms covered by this rule.
R3-10-501	Qualifications and Training for Personnel: This outlines specific requirements for training for farm personnel who handle or contact product.
R3-10-502	Training; Covered Activity; Minimum Requirements: This outlines specific minimum requirements for all personnel on food hygiene and food safety, when product should not be harvested because it is likely contaminated, containers for product are clean and maintained, how to correct protentional food safety issues or concerns and that at least one supervisor or

	designated representative for the farm shall have successfully completed food safety training at least equivalent to that received under standardized curriculum recognized as adequate by the FDA.
R3-10-503	Supervision; Identified Personnel: This provides the AZDA information on who the farm point of contact that is responsible to ensure compliance with the requirements of Articles 2 to 17.
R3-10-504	Required Training; Recordkeeping: This outline what records the farm needs to keep and provide to document training that has been done and can be verified during their regulatory inspection.
R3-10-601	Prevention Measures; Ill or Infected Persons: This requires that a farm not allow or assign duties to personnel that are sick. This includes not allowing them to work with any operations that include covered produce or food contact surfaces.
R3-10-602	Covered Personnel; Hygienic Practices: This outlines specific hygienic practices and when they are required of personnel. For example, when handwashing must occur, jewelry policies, specific designated areas away from product for eating and smoking areas, and glove use requirements if they are used.
R3-10-603	Contamination Prevention; Visitors: This outlines requirements for farm to have a visitor policy and ensure that visitors comply with farms food safety polices and procedures.
R3-10-701	Agricultural Water; Incorporation of Federal Regulations: The FDA has repeatedly revised these standards since 2015 so they have not been enforced to date. In May 2024 the FDA finalized these standards with compliance dates set for January 2025. The AZDA adopted the FDA standards by reference to allow the FDA time to complete rulemaking, now that this is complete the AZDA will work to update these rules.
R3-10-801	Definitions: These words and phrases are defined for use in Article 8, unless the context otherwise requires. These provide clarity and consistency for those impacted by these rules.
R3-10-802	Status of Biological Soil Amendments of Animal Origin (BSAAO); Requirements: Establishes requirements for certain agricultural inputs, including BSAAO, which are materials that consist of animal origin in whole or in part. Examples of BSAAO include untreated manure, composted manure, animal mortalities, blood meal, fish hydrolysate, and other non-fecal animal byproducts. This Article does not prohibit farms from using BSAAO, including manure produced as part of a sustainability or co-management program. However, it does require that untreated BSAAO, such as raw manure, be applied in a manner that minimizes the potential for contact with covered produce during and after application. The Article also establishes microbial standards for processes used to treat BSAAO, including manure, to limit detectable amounts of bacteria.
R3-10-803	Handling, Conveying and Storing Biological Soil Amendments of Animal Origin: Requires that handling, conveying, and storing untreated BSAAO in a manner that they do not contaminate treated BSAAO and do not become a potential source of contamination to covered produce, food-contact surfaces, areas used for a covered activity, agricultural water sources, agricultural water distribution systems, or treated soil amendments.
R3-10-804	Prohibition of Application of Human Waste: The term ''biological soil amendment of animal origin'' does not include any form of human waste. This requirement prohibits the use of human waste.
R3-10-805	Biological Soil Amendment of Animal Origin; Acceptable Treatment Processes; Microbial Standards: Establishes microbial standards for treating BSAAOs such as manure, to limit detectable amounts of bacteria. The standards include limits for Listeria monocytogenes, Salmonella spp., fecal coliforms, and E. coli 0157:H7. There are two allowable validated treatment processes for BSAAOs, which are static composting (Maintain aerobic conditions at a minimum of 131°F for three consecutive days, followed by adequate curing) and turned composting (Maintain aerobic conditions at a minimum of 131°F for 15 days, not necessarily consecutive, with a minimum of five turnings, followed by adequate curing)
R3-10-806	Application Requirements; Minimum Application Intervals: The application interval is the time between applying a BSAAO to a growing area and harvesting produce from that area. This requires that untreated biological soil amendments of animal origin (BSAAOs) like raw manure be applied in a way that minimizes contact with covered produce during and after application. Current industry standard calls for a 120-day interval between

	applying raw manure to crops that touch the soil and 90 days for crops that don't touch the soil.
R3-10-807	Biological Soil Amendment; Recordkeeping: Requires records for treated BSAAO. For soil amendments that growers treat and apply on their own farms, records must be kept to document that process controls (e.g., time, temperature, and turnings) were achieved. Records related to on-farm soil amendment treatment must be reviewed, dated, and signed by a supervisor or responsible party.
R3-10-901	Domesticated and Wild Animals; Inclusion; Exclusion: During the growing season, fields must be inspected for evidence of fecal contamination and measures must be taken as necessary to ensure that contamination cannot occur during harvesting. This recognizes that it's difficult to completely prevent wildlife from entering fields, and doesn't expect farms to do so. Instead, farms are encouraged to monitor for contamination from animals, and to take reasonable and practical nonlethal measures to keep animals away, such as using noise cannons, decoys, or netting. This also requires farms to not harvest produce that may be contaminated if there's significant evidence of contamination.
R3-10-902	Grazing and Working Animals; Animal Intrusion; Requirements: Currently available science for specific minimum time period between grazing and harvesting are not prescriptive across various commodities and farming practices. Rather, the appropriate minimum time period between grazing and harvesting would need to be determined based on the specific factors applicable to the conditions and practices associated with growing and harvesting the commodity. This rule does not prohibit the use of working animals, but farms should consider and minimize the risks they may pose to food safety.
R3-10-903	Covered Farms; Taking of Threatened or Endangered Species; Managing Outdoor Growing Areas: This rule outlines consideration and requires compliance with the federal Endangered Species Act (16 U.S.C. 1531-1544) (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct), in violation of the Endangered Species Act. This regulation does not require covered farms to take measures to exclude animals from outdoor growing areas, or to destroy animal habitat or otherwise clear farm borders around outdoor growing areas or drainages.
R3-10-1001	Growing, Harvesting and Packing of Covered and Excluded Produce: Requires farms to keep covered produce away from produce activities or products/produce not covered by Articles 2-17.
R3-10-1002	Required Measures Prior to Harvest: This outlines actions to ensure that covered produce that is or could be contaminated not be harvested.
R3-10-1003	Handling Covered Produce During Covered Activities: The farm shall handle harvested covered produce during covered activities in a manner that protects against contamination with known or reasonably foreseeable hazards, for example, by avoiding, to the degree practicable, contact of cut surfaces of harvested produce with soil.
R3-10-1004	Dropped Covered Produce; Requirements: This outline what dropped produce is and prohibits the distribution of dropped covered produce.
R3-10-1005	Food Packing and Packaging; Requirements: Requires that food-packing material be adequate for its intended use and that packing be done in a manner to prevent pathogen formation.
R3-10-1101	Equipment and Tools; Inclusion; Requirements: This outlines the use requirements for equipment and tools that come into contact with covered produce.
R3-10-1102	Buildings; Specific Inclusions: Requires buildings that are used for covered activities, those that store food contact surfaces are coved under these rules.
R3-10-1103	Equipment and Tools; Cleaning and Maintenance: Requires cleaning and maintenance of equipment and tools that are used or may contact covered produce.
R3-10-1104	Maintenance of Instruments and Controls: Requirements for instruments or controls the farm uses to measure, regulate, or record temperatures, hydrogen-ion concentration (pH), sanitizer efficacy or other conditions, in order to control or prevent the growth of undesirable microorganisms of public health significance.
R3-10-1105	Maintenance of Equipment Used for Transport of Covered Produce: This requires that all transportation used to move covered produce be clean.

R3-10-1106	Buildings; Suitability; Drainage: Buildings shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for covered activities to reduce the potential for contamination with known or reasonably foreseeable hazards of covered produce or food contact surfaces. Additionally, requiring the building to have proper drainage for water and condensate.
R3-10-1107	Buildings; Domesticated Animals: Requires farms to take reasonable precautions to prevent contamination from hazards of covered produce, food contact surfaces, and food-packing materials in fully enclosed buildings from domesticated animals
R3-10-1108	Buildings; Pest Control; Routine Monitoring: Requires farms to take those measures reasonably necessary to protect covered produce, food contact surfaces, and food-packing materials from contamination by pests in buildings.
R3-10-1109	Toilet Facilities; Adequacy; Accessibility: Requires farms to provide personnel with adequate, readily accessible toilet facilities, including toilet facilities readily accessible to growing areas during harvesting activities.
R3-10-1110	Hand-Washing Facilities; Appropriate Disposal of Waste: Requires farms to provide personnel with adequate, readily accessible hand-washing facilities during growing activities that take place in a fully-enclosed building, and during covered harvest, packing, or holding activities. This additionally requires for hand-washing facilities be equipped with specific items (i.e., soap, running water, drying devices, trashcans).
R3-10-1111	Sewage; Control and Disposal; Significant Events: The farm shall dispose of sewage into an adequate sewage or septic system or through other adequate means. This also requires that septic systems are maintained and that leaks and spills are planned for.
R3-10-1112	Trash, Litter and Waste; Conveyance, Storage and Disposal: The farm shall convey, store, and dispose of trash, litter, and waste to protect against contamination of covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, and agricultural water distribution systems.
R3-10-1113	Plumbing; Adequacy of Size and Design: A farm's plumbing shall be of an adequate size and design and be adequately installed and maintained to avoid being a source of contamination to covered produce, food contact surfaces, areas used for a covered activity, or agricultural water sources.
R3-10-1114	Control of Animal Excreta from Domesticated Animals: If the farm has domesticated animals, to prevent contamination with animal waste, of covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, or agricultural water distribution systems.
R3-10-1115	Equipment, Tools, Buildings and Sanitation; Recordkeeping: The farm shall establish and keep records required under this article in accordance with the requirements of Article 14 and establish and keep documentation of the date and method of cleaning and sanitizing of equipment subject to this Article.
R3-10-1201	Sprouts; Incorporation of Federal Regulations: The FDA has been working to update these standards so they were not being enforced. The AZDA adopted the FDA Standards by reference to allow FDA time to complete rule making and then the AZDA will update these once FDA had finalized.
R3-10-1301	Analytical Methods; Incorporation of Federal Regulations: The FDA has been working to update these standards so they were not being enforced. The AZDA adopted the FDA Standards by reference to allow FDA time to complete rule making and then the AZDA will update these once FDA had finalized.
R3-10-1401	Definition- Produce Safety Records: These words and phrases are defined for use in Article 14, unless the context otherwise requires. These provide clarity and consistency for those impacted by these rules.
R3-10-1402	Recordkeeping; Signature by Responsible Party: The FSMA Produce Safety Rule (PSR) requires a few specific records for covered farms. This summarizes the provision that these records be reviewed and signed by the responsible party. The records that are required and must be signed by the designated representative are: Records to Support a Farm's Coverage or Exemption Status (Article 4); Personnel Qualifications and Training (Article 5); Agricultural Water (Article 7); Biological Soil Amendments of Animal Origin (Article 8); Equipment, Tools, Buildings, and Sanitation (Article 11).

R3-10-1403	Records; Off-Site Storage and Electronic Records: Allows for the storage of records offsite if such records can be retrieved and provided onsite within 24 hours of official request. Electronic records are acceptable if they can be accessed on the farm.
R3-10-1404	Existing Records; Duplication; Supplementation: Specifies that existing records do not need to be duplicated if they contain all of the required information. For instance, if records are kept for organic certification and they include the required information, there is no need to duplicate these records.
R3-10-1405	Period for Maintenance of Records: Requires that records be kept for at least 2 years past the date the record was created. Records that a farm relies on to support a qualified exemption must be retained as long as necessary to support the farm's status.
R3-10-1406	Records; Acceptable Formats: Requires the records be kept as original records, true copies or electronic records.
R3-10-1407	Availability and Accessibility of Records to Department: outlines requirements for making records available and accessible to the AZDA.
R3-10-1408	Disclosure of Records to Outside Parties: Records must be readily available and accessible during the retention period for inspection and copying by AZDA upon oral or written request. Covered Farms have 24 hours to obtain records kept offsite, even if the farm is closed for a prolonged period. Records must be provided to AZDA in a format that is accessible and legible.
R3-10-1501	Request for Variance; Method of Request; Required Information: This provision allows states and foreign governments to request a variance if local growing conditions require it. A variance is a written document that authorizes a modification or waiver of one or more requirements. The regulatory authority may issue a variance if they believe that the modification or waiver will not result in a health hazard, risk, or nuisance. The variance request must include relevant and scientifically valid information specific to the produce or activity.
R3-10-1601	Definitions – Produce Safety Inspections, Violation and Enforcement: These words and phrases are defined for use in Article 16, unless the context otherwise requires. These provide clarity and consistency for those impacted by these rules.
R3-10-1602	Inspection; Procedure; Conduct: This provides stakeholders awareness of the State of Arizona inspections procedure outlined in A.R.S. §41-1009 and the requirements for the designated representative of the farm shall provide information at the time of the inspection regarding known entities associated with the farm that are subject to inspection.
R3-10-1603	Initial Inspection: These rules outline what the stakeholder should expect during their first inspection.
R3-10-1604	Routine Inspection, Reinspection, or for Cause Inspection: These rules outline what the stakeholder should expect during their routine inspections. It also covers the AZDA's authority for reinspection or conditions that would require a for cause inspection.
R3-10-1605	Egregious Violation: This provides a nonexclusive list of practices, conditions or situations on a farm that is substantially likely to lead to serious adverse health consequences or death from the consumption of or exposure to covered produce. This provides farms specific actions that are prohibited.
R3-10-1606	Imminent Public Health Hazard Violation: This provides a nonexclusive list of practices, conditions or situations on a farm that, if corrective action is not taken immediately, are substantially likely to lead to a potential source of contamination that may cause serious adverse health consequences or death from the consumption of or exposure to covered produce. This provides farms specific actions that are prohibited.
R3-10-1607	Significant Violation: This provides a nonexclusive list of practices, conditions or situations on a farm that, if corrective action is not taken, are reasonably likely to increase the risk of contamination to covered produce. This provides farms specific actions that are prohibited.
R3-10-1608	Major Violation: This provides a nonexclusive list of practices, conditions or situations on a farm that, if corrective action is not taken, may increase the risk of contamination to covered produce. This provides farms specific actions that are prohibited.
R3-10-1609	Minor Violation: This provides a nonexclusive list of practices, conditions or situations on a farm that will not increase the risk of contamination to covered produce. This provides farms specific actions that are prohibited.

R3-10-1610	Unlisted Violation; Classification: This provides the AZDA a classification not specifically listed as egregious, imminent health hazard, significant, major or minor violation, according to the nature and urgency of the violation and the risk to public health and safety.
R3-10-1611	Violation; Reclassification; Factors: For significant, major or minor violation, the AZDA may be classify as a higher or lower violation based on the nature and urgency of the violation and the risk to public health and safety.
R3-10-1612	Aggravating and Mitigating Circumstances; Factors: This outlines factors either aggravation or mitigating the specific conditions of the violation.
R3-10-1613	Repeat Violations; Penalty: This outlines an inspections action if during a routine inspection, reinspection or for cause inspection, they observe conditions that have been repeated after the farm was previously notified of the same or similar violation.
R3-10-1614	Civil Penalties: This outlines the AZDA's ability to access penalty.
R3-10-1615	Violation; Appeal: This outlines the farms rights to request an Administrative Hearing.
R3-10-1701	Withdrawal of Qualified Exemption; Incorporation of Federal Regulations: This outlines the FDA's authority for withdrawing a farms qualified exemption and was adopted by reference.
R3-10-1702	Withdrawal of Qualified Exemption; FDA: If an exempt farm is associated with a foodborne outbreak or does not comply with the rules then their exemption can be taken away by the FDA.
R3-10-1703	Withdrawal of Qualified Exemption; Department: If an exempt farm is associated with a foodborne outbreak or does not comply with the rules in Article 4 then their exemption can be taken away by the AZDA.
R3-10-1704	Change in Eligibility: If the FDA or the AZDA deems a farms eligibility changes then the farm that had a qualified exemption would then become a covered farm and required to comply with Articles 2-17.
R3-10-1705	Withdrawal of Qualified Exemption; Department; Orders: This outlines the process for the AZDA Director to withdraw a qualified exemption.
R3-10-1706	Administrative Hearing Procedures; Appeals: This outlines the farms rights to request a public hearing or appeal the action of withdraw of a qualified exemption.
R3-10-1707	Qualified Exemption; Reinstatement: This allows the AZDA's Director to reinstate a farm with a qualified exemption once the issue is resolved.

3. **Are the rules effective in achieving their objectives?** **Yes X No __**
The rules in Articles 2-17 are effective in achieving their objectives.

4. **Are the rules consistent with other rules and statutes?** **Yes X No __**
The rules in Articles 2-17 are consistent with other rules and statutes.

5. **Are the rules enforced as written?** **Yes X No __**
The rules in Articles 2-17 are enforced as written.

6. **Are the rules clear, concise, and understandable?** **Yes X No __**
The rules in Articles 2-17 are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes __ No X**
The Department has not received any comments regarding these rules in the time prior to the submission of this report.

8. **Economic, small business, and consumer impact comparison:**
The AZDA has not completed an impact comparison. FDA measured costs based on the best available information from government, industry, and academic sources. FDA's Analysis of Economic Impacts – Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption can be found here: (https://www.fda.gov/about-fda/economic-impact-analyses-fda-regulations/summary-regulatory-impact-analysis-standards-growing-harvesting-packing-and-holding-produce-human)

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ___ No X**

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
Since this was the first five years of implementation there was no previous rule review.

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:**

In 2011, after several years of gathering stakeholder input, the FDA published the final regulations promulgating the Food Safety Modernization Act (FSMA) which includes requirements for regulation of farming operations for the first time in U.S. history. In 2015, the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (the Produce Safety Rule) were finalized. The Produce Safety Rule (PSR) establishes, for the first time, science-based minimum standards for the safe growing, harvesting, packing, and holding of fruits and vegetables grown for human consumption. The goal is to reduce incidents of food-borne illness/death. These rules shift focus from responding to contamination to preventing contamination so the benefits outweigh the costs. Additionally, many farms voluntarily participate and comply with other third-party food safety auditing requirements that exceed these rules to gain market access and ensure food safety. The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___ No X**
The AZDA entered into an agreement with the U.S. Food and Drug Administration (FDA) to assume jurisdiction and enforcement responsibilities for the federal Produce Safety Rule (PSR) (21 CFR Part 112), as authorized under the FDA Food Safety Modernization Act (21 U.S.C. §§ 2201-2252). These rules are not more stringent than the 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 to do not require a regulatory permit or license.

14. **Proposed course of action**
The Department intends to maintain the rules as currently written.

TITLE 3. AGRICULTURE

CHAPTER 10. DEPARTMENT OF AGRICULTURE - CITRUS FRUIT AND VEGETABLE DIVISION

Authority: A.R.S. §§ 3-107(A)(1)

Supp. 21-3

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Article 10, consisting of new Sections R3-10-1001 through R3-10-1005, made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019 (Supp. 20-1).

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Article 15, consisting of new Section R3-10-1501, made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019 (Supp. 20-1).

ARTICLE 16. PRODUCE SAFETY INSPECTIONS, VIOLATIONS AND ENFORCEMENT

Article 16, consisting of new Sections R3-10-1601 through R3-10-1615, made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019 (Supp. 20-1).

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Article 17, consisting of new Sections R3-10-1701 through R3-10-1707, made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019 (Supp. 20-1).

Section

ARTICLE 1. LICENSING FEES

R3-10-101. Citrus Fruit Dealer or Shipper Licensing Fee

A person may not transact business as a citrus fruit dealer or shipper without first obtaining a license as provided in Arizona Revised Statutes, Title 3, Chapter 3, Article 2. For fiscal year 2022, license fee shall be determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:

1. If the annual gross sales are $500,000 or more, the annual fee is $112.50.
2. If the annual gross sales are between $200,000 and $500,000, the annual fee is $75.
3. If the annual gross sales are $200,000 or less, the annual fee is $37.50.
4. If the person was not in business the previous fiscal year, the annual fee is $37.50.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 2227, effective July 1, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2089, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1477, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1270, effective July 31, 2021 (Supp. 21-3).

R3-10-102. Fruit and Vegetable Dealer or Shipper Licensing Fee

A person shall not act as a fruit or vegetable dealer or shipper without first obtaining a license as provided in Arizona Revised Statutes, Title 3, Chapter 3, Article 4. For fiscal year 2022, application for the license shall be filed with the supervisor and accompanied by a license fee determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:

1. If the annual gross sales are $500,000 or more, the annual fee is $125.
2. If the annual gross sales are $200,000 and $500,000, the annual fee is $87.50.
3. If the annual gross sales are $200,000 or less, the annual fee is $50.
4. If the person was not in business the previous fiscal year, the annual fee is $50.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 2227, effective July 1, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2089, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1477, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1270, effective July 31, 2021 (Supp. 21-3).

ARTICLE 2. PRODUCE SAFETY

R3-10-201. Definitions

In addition to the terms defined under A.R.S. §§ 3-481 and 3-525, these words and phrases are defined for use in Articles 2 through 17, unless the context otherwise requires:

1. "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice.
2. "Adequately reduce undesirable microorganisms of public health significance" means reduce the presence of such undesirable microorganisms to an extent sufficient to prevent illness.
3. "Agricultural water" means water used in either:
   a. Covered activities on covered produce where water is intended to, or is likely to, contact covered produce or food contact surfaces, including water used in all growing activities, such as irrigation water applied using direct water agricultural methods, water used for preparing crop sprays, and water used for growing sprouts; or
   b. Harvesting, packing and holding activities, such as water used for washing or cooling harvested produce and water used for preventing dehydration of covered produce.
4. "Animal excreta" means solid or liquid animal waste.
5. "Applicable health condition" includes but is not limited to:
   a. A communicable illness that presents a public health risk in the context of normal work duties,
   b. An infection,
   c. An open lesion,
   d. Vomiting, or
   e. Diarrhea.
6. "Covered activity" means:
   a. Growing, harvesting, packing, or holding covered produce on a farm, including manufacturing or processing of covered produce on a farm, but only to the extent that these activities are performed on raw agricultural commodities and only to the extent that these activities are within the meaning of "farm" as defined in this Chapter, and providing, acting consistently with, and documenting actions taken in compliance with written assurances as described in R3-10-303; and
   b. Does not apply to activities of a facility that are subject to 21 CFR 1(B)(110) relating to preventive controls for human food and current good manufacturing practice in manufacturing, packing or holding human food.
7. "Covered produce" means:
   a. Produce that is subject to the requirements of Articles 3 through 17 in accordance with R3-10-303 and R3-10-304, and
   b. Refers to the harvestable or harvested part of the crop.
8. "Department" means the Arizona Department of Agriculture.
9. "Designated representative" means the individual who is responsible for the farm's compliance with the requirements of Articles 3 through 17 that are applicable to the farm and who is selected by the owner, operator, lessee or agent. A designated

representative may include an owner, operator, lessee, farm manager, produce safety expert, food safety professional, or agent of the farm.

10. "Direct water application method" means using agricultural water in a manner whereby the water is intended to, or is likely to, contact covered produce or food contact surfaces during use of the water.
11. "Farm" means:
    a. Primary Production Farm. A primary production farm is an operation under one management in one general, but not necessarily contiguous, physical location devoted to growing crops, harvesting crops, raising animals, including seafood, or any combination of these activities. The term "farm" includes operations that, in addition to the above activities, also includes:
        i. Packing or holding raw agricultural commodities;
        ii. Packing or holding processed food, provided that all processed food used in such activities is either consumed on that farm or another farm under the same management or is processed food identified in subsection (11)(a)(iii)(2)(a) of this definition; and
        iii. Manufacturing or processing food, provided that either:
            (1) All food used in such activities is consumed on that farm or another farm under the same management;
            (2) Any manufacturing or processing of food that is not consumed on that farm or another farm under the same management consists only of:
                (a) Drying or dehydrating raw agricultural commodities to create a distinct commodity, such as drying or dehydrating grapes to produce raisins, and packaging and labeling such commodities, without additional manufacturing or processing;
                (b) Treatment to manipulate the ripening of raw agricultural commodities, such as by treating produce with ethylene gas, and packaging and labeling treated raw agricultural commodities, without additional manufacturing or processing; and
                (c) Packaging and labeling raw agricultural commodities, when these activities do not involve additional manufacturing or processing, such as irradiation; or
    b. Secondary Activities Farm. A secondary activities farm is an operation, not located on a primary production farm, devoted to harvesting, such as hulling or shelling, packing, or holding of raw agricultural commodities, provided that the primary production farm that grows, harvests, or raises the majority of the raw agricultural commodities harvested, packed, or held by the secondary activities farm owns, or jointly owns, a majority interest in the secondary activities farm. A secondary activities farm may also conduct those additional activities allowed on a primary production farm in subsections (11)(a)(i) and (ii) of this definition.
12. "FDA" means U.S. Food and Drug Administration.
13. "Food contact surfaces" means:
    a. Those surfaces that contact human food and those surfaces from which drainage, or other transfer, onto the food or onto surfaces that contact the food ordinarily occurs during the normal course of operations; and
    b. Includes food contact surfaces of equipment and tools used during harvest, packing and holding.
14. "Food grains" means:
    a. The small hard fruits or seeds of arable crops, or the crops bearing these fruits or seeds;
    b. Are primarily grown and processed for use as meal, flour, baked goods, cereals and oils rather than for direct consumption as small, hard fruits or seeds; and
    c. Includes barley, dent- or flint-corn, sorghum, oats, rice, rye, wheat, amaranth, quinoa, buckwheat, and oilseeds, such as cottonseed, flax seed, rapeseed, soybean, and sunflower seed.
15. "Harvesting" means:
    a. Activities on farms and farm mixed type facilities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food;
    b. Is limited to activities performed on raw agricultural commodities, or on processed foods created by drying or dehydrating a raw agricultural commodity without additional manufacturing or processing, on a farm;
    c. Does not include activities that transform a raw agricultural commodity into a processed food as defined in Section 201 (gg) of the Federal Food, Drug, and Cosmetic Act; and
    d. Includes:
        i. Cutting or otherwise separating the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity, such as foliage, husks, roots or stems.
        ii. Cooling, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming outer leaves, and washing raw agricultural commodities grown on a farm.
16. "Holding" means:
    a. Storage of food and activities performed incidental to storage of a food [Holding facilities could include warehouses, cold storage facilities, storage silos, grain elevators, and liquid storage tanks];
    b. Includes activities performed as a practical necessity for distribution of that food, such as blending of the same raw commodity and breaking down pallets;
    c. Examples include activities performed for the safe or effective storage of that food, such as fumigating food during storage, and drying or dehydrating raw agricultural commodities, when drying or dehydrating does not create a distinct commodity, such as drying or dehydrating hay or alfalfa; and

d. Does not include activities that transform a raw agricultural commodity into a processed food as defined in Section 201 (gg) of the Federal Food, Drug and Cosmetic Act.

17. "Known or reasonably foreseeable hazard" means a biological agent that is known, is recognized, or has the potential to cause illness or injury in the absence of its control.
18. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.
19. "Manufacturing or processing" means:
    a. Making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients;
    b. Examples include baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying or dehydrating raw agricultural commodities to create a distinct commodity, such as drying or dehydrating grapes to produce raisins, evaporating, eviscerating, extracting juice, formulating, freezing, grinding, homogenizing, labeling, milling, mixing, packaging, including modified atmosphere packaging, pasteurizing, peeling, rendering, treating to manipulate ripening, trimming, washing, or waxing; and
    c. Does not include, for farms and mixed-type facilities, activities that are part of harvesting, packing, or holding.
20. "Manure" means animal excreta, alone or in combination with litter, such as straw and feathers used for animal bedding, for use as a soil amendment.
21. "Monitor" means to conduct a planned sequence of observations or measurements to assess whether a process, point or procedure is under control and, when required, to produce an accurate record of the observation or measurement.
22. "Packing" means:
    a. Placing food into a container and also includes re-packing and activities performed incidental to packing or re-packing a food;
    b. Includes activities performed for the safe or effective packing or re-packing of that food, such as sorting, culling, grading, and weighing or conveying incidental to packing or re-packing; and
    c. Does not include activities that transform a raw agricultural commodity into a processed food as defined in Section 201(gg) of the Federal Food, Drug, and Cosmetic Act.
23. "Pest" means any objectionable animals or insects, including birds, rodents, flies, and larvae.
24. "Produce" means:
    a. Any fruit as defined in Article 3 or vegetable as defined in this Section;
    b. Includes mixes of intact fruits and vegetables as well as mushrooms, sprouts, irrespective of seed source, peanuts, tree nuts and herbs; and
    c. Does not include food grains as defined in this Section.
25. "Sanitize" means to adequately treat cleaned surfaces by a process that is effective in destroying vegetative cells of undesirable microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.
26. "Undesirable microorganisms" means yeasts, molds, bacteria, viruses, protozoa, and microscopic parasites and includes species having public health significance.
27. "Vegetable" means:
    a. The edible part of an herbaceous plant, such as cabbage or potato, or fleshy fruiting body of a fungus, such as white button or shiitake, grown for an edible part;
    b. Means the harvestable or harvested part of any plant or fungus whose fruit, fleshy fruiting bodies, seeds, roots, tubers, bulbs, stems, leaves, or flower parts are used as food; and
    c. Includes mushrooms, sprouts, and herbs, such as basil or cilantro.
28. "Visitor" means any person, other than personnel, who enters a covered farm with permission.
29. "Water distribution system" means a system to carry water from its primary source to its point of use, including pipes, sprinklers, irrigation canals, pumps, valves, storage tanks, reservoirs, meters, and fittings.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 3. PRODUCE SAFETY GENERAL PROVISIONS

R3-10-301. Definitions

These words are defined for use in this Article, unless the context otherwise requires:

1. "Fruit" means:
    a. The edible reproductive body of a seed plant or tree nut and the harvestable or harvested part of a plant developed from a flower; and
    b. Includes apples, oranges and almonds.
2. "Mixed-type facility" means an establishment that engages in both activities that are exempt from registration under Section 415 of the Federal Food, Drug, and Cosmetic Act and activities that require the establishment to be registered.
3. "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-302. Applicability

A. Articles 2 through 17 apply to primary production farms and secondary activities and require appropriate measures to minimize the risk of serious adverse health consequences or death from the use of, or exposure to, covered produce, including those measures reasonably necessary to prevent the introduction of known or reasonably foreseeable hazards into covered produce, and to provide reasonable assurances that the produce is not adulterated under Section 402 of the Federal Food, Drug and Cosmetic Act on account of such hazards.

B. The goal of Articles 2 through 17 is to achieve compliance through education, training and alternative enforcement approaches in order to address present violations and prevent future violations.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-303. Food Safety; Covered Produce

A. Unless specifically excluded by R3-10-304, the following is subject to the requirements of Articles 2 through 17:

1. Food that is covered produce;
2. A produce raw agricultural commodity that is grown domestically; and
3. A produce raw agricultural commodity that will be imported or offered for import in any state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

B. Covered produce includes, but is not limited to, the following:

1. Fruits and vegetables such as almonds, apples, apricots, apriums, Artichokes-globe-type, Asian pears, avocados, babacos, bananas, Belgian endive, blackberries, blueberries, boysenberries, Brazil nuts, broad beans, broccoli, Brussels sprouts, burdock, cabbages, Chinese cabbages (Bok Choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and uniq fruit), cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas-pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprouts (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams; and
2. Mixes of intact fruits and vegetables, such as fruit baskets.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-304. Food Safety; Covered Produce; Exclusions

A. The following produce is not covered by Articles 2 through 17:

1. Produce that is rarely consumed raw, specifically: asparagus, beans (such as black, great Northern, kidney, lima, navy, pinto), sugar beets (including garden roots and tops), cashew, sour cherries, chickpeas, cocoa beans, coffee beans, collards, sweet corn, cranberries, dates, dill seeds and weed, eggplants, figs, ginger, hazelnuts, horseradish, lentils, okra, peanuts, pecans, peppermint, potatoes, pumpkins, winter squash, sweet potatoes, and water chestnuts;
2. Produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; and
3. Produce that is not a raw agricultural commodity.

B. In addition to the exclusions provided in subsection (A), produce is eligible for exclusion if all of the following conditions are met:

1. The produce receives commercial processing that adequately reduces the presence of undesirable microorganisms of public health significance including those used for all of the following:
   a. Processing in accordance with the requirements of 21 CFR 113, 114, or 120;
   b. Treating with a validated process to eliminate spore-forming undesirable microorganisms, such as processing to produce tomato paste or shelf-stable tomatoes; and
   c. Processing such as refining, distilling, or otherwise manufacturing or processing produce into products such as sugar, oil, spirits, wine, beer or similar products.
2. The farm discloses in documents accompanying the produce, in accordance with the practice of the trade, that the food is "not processed to adequately reduce the presence of undesirable microorganisms of public health significance."
3. The farm either:
   a. Annually obtains written assurance, subject to the requirements of this subsection, from the customer that performs the commercial processing that the customer has established and is following procedures identified in the written assurance that adequately reduce the presence of undesirable microorganisms of public health significance;

b. Annually obtains written assurance, subject to the requirements of this subsection, from the customer that an entity in the distribution chain subsequent to the customer will perform that commercial processing and that the customer will both:
   i. Disclose in documents accompanying the food, in accordance with the practice of the trade, that the food is specifically "not processed to adequately reduce the presence of undesirable microorganisms of public health significance;" and
   ii. Only sell to another entity that agrees, in writing, it will either:
      (1) Follow procedures identified, in a written assurance that adequately reduce the presence of undesirable microorganisms of public health significance;
      (2) Obtain a similar written assurance from its customer that the above produce will receive commercial processing described in subsection (B)(3)(b)(i), and that there will be disclosure in documents accompanying the food, in accordance with the practice of the trade, that the food is specifically "not processed to adequately reduce the presence of undesirable microorganisms of public health significance."

4. The farm shall establish and maintain documentation of compliance with applicable requirements in subsections (B)(2) and (3) in accordance with the requirements of Article 14, including both:
   a. Documents containing disclosures required under subsection (B)(2); and
   b. Annual written assurances obtained from customers required under subsection (B)(3).
5. The requirements of this Article and Article 4 apply to such produce; and
6. An entity that provides a written assurance under subsection (B)(3) shall act consistently with the assurance and document its actions taken to satisfy the written assurance.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-305. Designated Representative; Notice Requirements to the Department

A. The owner, operator, lessee or agent in charge of a farm shall notify the Department of the name, email address and telephone number of the farm's designated representative.

B. The farm may notify the Department of an alternate designated representative that can be contacted if the farm's designated representative is unavailable.

C. If the designated representative terminates employment or no longer functions as the designated representative of the farm, the owner, operator, lessee or agent in charge of the farm shall select another designated representative within 30 days and notify the Department of the replacement.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 4. PRODUCE SAFETY COVERED FARM AND QUALIFIED EXEMPTION

R3-10-401. Definitions

These words are defined for use in this Article, unless the context otherwise requires:

1. "Food sales" include sale of produce, processed food, hay, and commodities such as food grains, dairy and livestock.
2. "Qualified end-user," with respect to a food, means the consumer of the food, where the term "consumer" does not include a business; or a restaurant or retail food establishment, as those terms are defined in 21 CFR 1.227 that is located either:
   a. In the same state or the same Indian reservation as the farm that produced the food; or
   b. Not more than 275 miles from the farm that produced the food.
3. "Services" include activities related to covered produce such as harvesting, packing, holding or cooling.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-402. Inventory of Farms; Form; Electronic Submission

A. An owner, operator, lessee or designated representative of a farm subject to Articles 2 through 17 shall annually submit the following information on a form obtained from the Department:

1. Farm or business name, physical address, mailing address, email address and telephone number;
2. The name, email address and telephone number or numbers of the farm's designated representative and alternate designated representative, if applicable;
3. Type or types of business of the farm, such as grower, grower-shipper, harvester, packer, holder or cooler;
4. Types of crops grown, harvested, packed, held or cooled, such as leafy greens, citrus, melons, tree fruit, or vegetables;
5. Whether crops are grown, harvested, packed, held or cooled on a seasonal basis or year-round;
6. The average annual produce sales or income derived from services rendered during the last three years, including whether the amount was less than $25,000, $25,000 to $250,000, $250,000 to $500,000, or greater than $500,000;
7. Whether all produce sales are directly to consumers, restaurants, or retail food establishments that are within 275 miles of the farm or all sales are within the State of Arizona;
8. Whether during the previous three-year period the average food sales from the farm, such as processed food, hay, dairy, livestock or food grains, were less than $500,000; and

9. Whether the operation participates in any other food safety program, such as the Arizona Leafy Greens Marketing Agreement, Good Agricultural Practices and Good Handling Practices, Good Manufacturing Practices, Harmonized Good Agricultural Practices, Safe Quality Food certification or other recognized food safety programs.

B. The information required in subsection (A) shall be submitted annually to the Associate Director not later than October 1 of each year. If there is a material change to the information required in subsection (A), the owner, operator lessee or designated representative of the farm shall notify the Department within 60 days after the change.

C. The information required in subsection A may be submitted to the Department electronically.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-403. Covered Farm; Exclusion

A farm or mixed-type facility with an average annual monetary value of produce, as "produce" is defined in Section R3-10-201, sold during the previous three-year period, of more than $25,000 on a rolling basis, adjusted for inflation using 2011 as the baseline year for calculating the adjustment, is a "covered farm" subject to Articles 2 through 17. A covered farm subject to Articles 2 through 17 shall comply with all applicable requirements when conducting a covered activity on covered produce.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-404. Covered Farm; Qualified Exemption; Modifications

A. A farm is eligible for a qualified exemption and associated modified requirements in a calendar year if both of the following apply:

1. During the three-year period preceding the applicable calendar year, the average annual monetary value of the food the farm sold directly to qualified end-users during such period exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and
2. The average annual monetary value of all food that the farm sold during the three-year period preceding the applicable calendar year was less than $500,000, adjusted for inflation.

B. For the purpose of determining whether the average annual monetary value of all food sold during the three-year period preceding the applicable calendar year was less than $500,000, adjusted for inflation, the baseline year for calculating the adjustment for inflation is 2011.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-405. Qualified Exemption; Eligibility; Modification Requirements

A. If a farm is eligible for a qualified exemption in accordance with R3-10-404, the farm is subject to this Article and Articles 2, 3, 14, 16 and 17.

B. In addition, the farm is subject to the following modified requirements:

1. When a food packaging label is required on food that would otherwise be covered produce under the Federal Food, Drug, and Cosmetic Act or its implementing regulations, the farm shall include prominently and conspicuously on the food packaging label the name and the complete business address of the farm where the produce was grown;
2. When a food packaging label is not required on food that would otherwise be covered produce under the Federal Food, Drug, and Cosmetic Act, the farm shall prominently and conspicuously display, at the point of purchase, the name and complete business address of the farm where the produce was grown, on a label, poster, sign, placard, or documents delivered contemporaneously with the produce in the normal course of business, or, in the case of internet sales, in an electronic notice; and
3. The complete business address to be included in accordance with the requirements of subsections (B)(1) and (2) shall include the street address or post office box, city, state, and zip code for domestic farms, and comparable full address information for foreign farms.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-406. Qualified Exemption; Maintenance of Records

If the farm is eligible for a qualified exemption in accordance with R3-10-404:

1. The farm shall establish and keep records required under this Article in accordance with the requirements of Article 14, except that the requirement in R3-10-1402(A)(4), for a signature or initial of the person performing the activity is not required for sales receipts kept in the normal course of business. The receipts shall be dated as required under R3-10-1402(A)(4).
2. The farm shall establish and keep adequate records necessary to demonstrate that the farm satisfies the criteria for a qualified exemption that are described in R3-10-404, including a written record reflecting that an annual review and verification of the farm's continued eligibility for the qualified exemption has been performed.
3. The farm shall establish and keep adequate records necessary to demonstrate that the farm satisfies the criteria for a qualified exemption that are described in R3-10-504, Article 7, R3-10-807 and R3-10-1115.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-407. Compliance Dates; Covered Farms; Agricultural Water

A. The compliance date for covered farms subject to the requirements of Articles 2 through 17 is calculated on a rolling basis during the previous three-year period, determined by the average annual monetary value of food sales and services rendered, as follows:
1. By January 26, 2018, all farms that sold more than $500,000;
2. By January 28, 2019, small farms that sold more than $250,000 but not more than $500,000; and
3. By January 27, 2020, very small farms that sold not more than $250,000.

B. The compliance date for covered farms subject to agricultural water requirements pursuant to Article 7 is calculated on a rolling basis during the previous three-year period, determined by the average annual monetary value of food sales and services rendered, as follows:
1. By January 26, 2022, all farms that sold more than $500,000;
2. By January 26, 2023, small farms that sold more than $250,000 but not more than $500,000; and
3. By January 26, 2024, very small farms that sold not more than $250,000.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 5. PRODUCE SAFETY PERSONNEL QUALIFICATIONS AND TRAINING

R3-10-501. Qualifications and Training for Personnel

All of the following requirements apply regarding qualifications and training for personnel who handle or contact covered produce or food contact surfaces:

1. All personnel, including temporary, part time, seasonal, and contracted personnel who handle or contact covered produce or food contact surfaces, or who are engaged in the supervision of those personnel shall receive adequate training, as appropriate to the person's duties. Training shall be required prior to personnel handling or contacting covered produce or food contact surfaces, and periodically thereafter, at least once annually;
2. All personnel, including temporary, part time, seasonal, and contracted personnel, who handle covered produce or food contact surfaces, or who are engaged in the supervision of those personnel, shall have a combination of education, training, and experience necessary to perform the person's assigned duties in a manner that ensures compliance with Articles 2 through 17;
3. Training shall be conducted in a manner that is easily understood by personnel being trained; and
4. Training shall be repeated as necessary and appropriate in light of observations or information indicating that personnel are not meeting standards established in this Article and Articles 6 through 14.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-502. Training; Covered Activity; Minimum Requirements

A. At a minimum, all personnel who handle or contact covered produce or food contact surfaces during covered activities or who supervise the conduct of the activities shall receive training that includes all of the following:
1. Principles of food hygiene and food safety;
2. The importance of health and personal hygiene for all personnel and visitors, including recognizing symptoms of a health condition that is reasonably likely to result in contamination of covered produce or food contact surfaces with undesirable microorganisms of public health significance; and
3. The standards established in this Article and Articles 6 through 14 that are applicable to the employee's job responsibilities.

B. Persons who conduct harvest activities for covered produce shall also receive training that includes all of the following:
1. Recognizing covered produce that shall not be harvested, including covered produce that may be contaminated with known or reasonably foreseeable hazards;
2. Inspecting harvest containers and equipment to ensure that they are functioning properly, clean, and maintained so as not to become a source of contamination of covered produce with known or reasonably foreseeable hazards; and
3. Correcting problems with harvest containers or equipment, or reporting those problems to the supervisor, or other designated representative, as appropriate to the person's job responsibilities.

C. At least one supervisor or designated representative for the farm shall have successfully completed food safety training at least equivalent to that received under standardized curriculum recognized as adequate by the FDA.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-503. Supervision; Identified Personnel

The farm shall assign or identify a person or persons to be responsible for its operations to ensure compliance with the requirements of Articles 2 through 17.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-504. Required Training; Recordkeeping

A. The farm shall establish and keep records required under this Article in accordance with the requirements of Article 14.

B. The farm shall establish and keep records of training that document the required training of personnel, including the date of training, topics covered, and the persons trained.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 6. PRODUCE SAFETY HEALTH AND HYGIENE

R3-10-601. Prevention Measures; Ill or Infected Persons

A. The farm shall take measures to prevent contamination of covered produce and food contact surfaces with undesirable microorganisms of public health significance from any person with an applicable health condition.

B. The farm shall take all of the following measures to satisfy the requirements of subsection (A):

1. Excluding any person from working in any operations that may result in contamination of covered produce or food contact surfaces with undesirable microorganisms of public health significance when the person, by medical examination, the person's acknowledgement, or observation, is shown to have, or appears to have, an applicable health condition;
2. Instructing personnel to notify their supervisor or a responsible party if they have, or if there is a reasonable possibility that they have an applicable health condition; and
3. The person may return to work when the person's health condition no longer presents a risk to public health.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-602. Covered Personnel; Hygienic Practices

A. Personnel who work in an operation in which covered produce or food contact surfaces are at risk of contamination with known or reasonably foreseeable hazards shall use hygienic practices while on duty to the extent necessary to protect against contamination.

B. The hygienic practices that personnel use to satisfy the requirements of subsection (A) when handling or contacting covered produce or food contact surfaces during a covered activity shall include all of the following:

1. Maintaining adequate personal cleanliness to protect against contamination of covered produce and food contact surfaces;
2. Avoiding contact with animals other than working animals, and taking appropriate steps to minimize the likelihood of contamination of covered produce when in direct contact with working animals;
3. Washing hands thoroughly, including scrubbing with soap or other surfactant, as appropriate, and water that is either from a municipal water source or is running water that has no detectable generic Escherichia coli (E. coli) in 100 milliliters (mL) of agricultural water used to wash hands (the use of untreated surface water is prohibited), and drying hands thoroughly using single-service towels, sanitary towel service, electric hand dryers, or other adequate hand drying devices on all of the following occasions:
   a. Before starting work;
   b. Before putting on gloves;
   c. After using the toilet;
   d. Upon return to the work station after any break or other absence from the work station;
   e. As soon as practical after touching animals, including livestock and working animals, or any waste of animal origin; and
   f. At any other time when the hands may have become contaminated in a manner that is reasonably likely to lead to contamination of covered produce with known or reasonably foreseeable hazards.
4. If gloves are used in handling covered produce or food contact surfaces, gloves shall be maintained in an intact and sanitary condition and shall be replaced when the gloves are no longer in an intact and sanitary condition;
5. Removing or covering hand jewelry that cannot be adequately cleaned and sanitized during periods in which covered produce is manipulated by hand; and
6. Not eating, chewing gum, or using tobacco products in an area used for a covered activity. Drinking beverages is permitted in designated areas as determined by the farm.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-603. Contamination Prevention; Visitors

A. The farm shall make visitors aware of policies and procedures to protect covered produce and food contact surfaces from contamination by people and take all steps reasonably necessary to ensure that visitors comply with the farm's policies and procedures.

B. The farm shall make toilet and hand-washing facilities accessible to visitors.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 7. PRODUCE SAFETY AGRICULTURAL WATER

R3-10-701. Agricultural Water; Incorporation of Federal Regulations

A. The Department incorporates by reference 21 CFR 112, Subpart E, as adopted in 80 FR 74353 on November 27, 2015, amended in 84 FR 9706 on March 18, 2019, and no later amendments or editions.

B. These sections establish standards for agricultural water quality used by farms and as amended, provide delayed compliance dates for farms based on their size. The incorporated material is on file with the Arizona Department of Agriculture at 1688 W. Adams Street, Phoenix, AZ 85007.

C. The incorporated material, developed by the U.S. Food and Drug Administration, Department of Health and Human Services, is available from the U.S. Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-001. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at ⁄https://bookstore.gpo.gov or is available free of charge at ⁄http://gpo.gov (electronic Code of Federal Regulations).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 8. PRODUCE SAFETY BIOLOGICAL SOIL AMENDMENTS OF ANIMAL ORIGIN AND HUMAN WASTE

R3-10-801. Definitions

These words are defined for use in this Article, unless the context otherwise requires:

1. "Agricultural tea" means:
   a. A water extract of biological materials, excluding any form of human waste, produced to transfer microbial biomass, fine particulate organic matter and soluble chemical components into an aqueous phase;
   b. Includes stabilized compost, manure, non-fecal animal byproducts, peat moss, pre-consumer vegetative waste, table waste, and yard trimmings;
   c. Is held for longer than one hour before application; and
   d. Is a soil amendment for purposes of this Article.
2. "Agricultural tea additive" means a nutrient source, such as molasses, yeast extract, or algal powder, added to agricultural tea to increase microbial biomass.
3. "Application interval" means the time interval between application of an agricultural input, such as a biological soil amendment of animal origin, to a growing area and harvest of covered produce from the growing area where the agricultural input was applied.
4. "Biological soil amendment" means any soil amendment containing biological materials such as stabilized compost, manure, non-fecal animal byproducts, peat moss, pre-consumer vegetative waste, sewage sludge biosolids, table waste, agricultural tea, or yard trimmings, alone or in combination.
5. "Biological soil amendment of animal origin" means a biological soil amendment which consists, in whole or in part, of materials of animal origin, such as manure or non-fecal animal byproducts including animal mortalities, or table waste, alone or in combination. The term "biological soil amendment of animal origin" does not include any form of human waste.
6. "Composting" means a process to produce stabilized compost in which organic material is decomposed by the actions of undesirable microorganisms under thermophilic conditions for a designated period of time at a designated temperature, followed by a curing stage under cooler conditions.
7. "Curing" means the final stage of composting, which is conducted after much of the readily metabolized biological material has been decomposed, at cooler temperatures than those in the thermophilic phase of composting, to further reduce pathogens, promote further decomposition of cellulose and lignin, and stabilize composition. Curing may or may not involve insulation, depending on environmental conditions.
8. "Growth media" means material that acts as a substrate during the growth of covered produce, such as mushrooms and some sprouts, that contains, may contain, or consists of components that may include any animal waste, such as stabilized compost, manure, non-fecal animal byproducts or table waste.
9. "Non-fecal animal byproduct" means solid waste, other than manure, that is animal in origin, such as meat, fat, dairy products, eggs, carcasses, blood meal, bone meal, fish meal, shellfish waste, such as crab, shrimp, and lobster waste, fish emulsions, and offal, and is generated by commercial, institutional, or agricultural operations.
10. "Pre-consumer vegetative waste" means:
    a. Solid waste that is purely vegetative in origin, not considered yard trash, and derived from commercial, institutional or agricultural operations without coming into contact with animal products, byproducts or manure or with a consumer end user;
    b. Includes material generated by farms, packing houses, canning operations, wholesale distribution centers and grocery stores, products that have been removed from their packaging, such as out-of-date juice, vegetables, condiments and breads, and associated packaging that is vegetative in origin, such as paper or corn-starch based products; and
    c. Does not include table waste, packaging that has come in contact with materials, such as meat, that are not vegetative in origin, or any waste generated by restaurants.

11. "Sewage sludge biosolids" means the solid or semi-solid residue generated during the treatment of domestic sewage in a treatment works within the meaning of the definition of "sewage sludge" in 40 CFR 503.9(w).
12. "Soil amendment" means:
    a. Any chemical, biological, or physical material, such as elemental fertilizers, stabilized compost, manure, non-fecal animal byproducts, peat moss, perlite, pre-consumer vegetative waste, sewage sludge biosolids, table waste, agricultural tea and yard trimmings, intentionally added to the soil to improve the chemical or physical condition of soil in relation to plant growth or to improve the capacity of the soil to hold water; and
    b. Includes growth media that serve as the entire substrate during the growth of covered produce, such as mushrooms and some sprouts.
13. "Stabilized compost" means a stabilized finished biological soil amendment produced through a controlled composting process.
14. "Static composting" means a process to produce stabilized compost in which air is introduced into biological material, in a pile or row that may or may not be covered with insulating material, or in an enclosed vessel, by a mechanism that does not include turning. Examples of structural features for introducing air include embedded perforated pipes and a constructed permanent base that includes aeration slots. Examples of mechanisms for introducing air include passive diffusion and mechanical means, such as blowers that suction air from the composting material or blow air into the composting material using positive pressure.
15. "Surface water" means all water open to the atmosphere, such as rivers, lakes, reservoirs, streams, impoundments, seas, estuaries, and all springs, wells, or other collectors that are directly influenced by surface water.
16. "Table waste" means any post-consumer food waste, irrespective of whether the source material is animal or vegetative in origin, derived from individuals, institutions, restaurants, retail operations, or other sources where the food has been served to a consumer.
17. "Turned composting" means a process to produce stabilized compost in which air is introduced into biological material, in a pile, row, or enclosed vessel, by turning on a regular basis.
18. "Turning" means the process of mechanically mixing biological material that is undergoing a composting process with the specific intention of moving the outer, cooler sections of the material being composted to the inner, hotter sections.
19. "Yard trimmings" means purely vegetative matter resulting from landscaping maintenance or land clearing operations, including materials such as tree and shrub trimmings, grass clippings, palm fronds, trees, tree stumps, untreated lumber, untreated wooden pallets, and associated rocks and soils.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-802. Status of Biological Soil Amendments of Animal Origin; Requirements

A. A biological soil amendment of animal origin is treated if it has been processed to completion to adequately reduce undesirable microorganisms of public health significance in accordance with the requirements of R3-10-805, or, in the case of an agricultural tea, the biological materials of animal origin used to make the tea have been so processed, the water used to make the tea is not untreated surface water, and the water used to make the tea has no detectable generic *Escherichia coli* (*E. coli*) in 100 milliliters (mL) of water.

B. A biological soil amendment of animal origin is untreated if it either:
1. Has not been processed to completion in accordance with the requirements of R3-10-805, or in the case of an agricultural tea, the biological materials of animal origin used to make the tea have not been so processed, or the water used to make the tea is untreated surface water, or the water used to make the tea has detectable generic *E. coli* in 100 mL of water;
2. Has become contaminated after treatment;
3. Has been recombined with an untreated biological soil amendment of animal origin;
4. Is or contains a component that is untreated waste that the designated representative knows or has reason to believe is contaminated with a hazard or has been associated with foodborne illness; or
5. Is an agricultural tea made with biological materials of animal origin that contains an agricultural tea additive.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-803. Handling, Conveying and Storing Biological Soil Amendments of Animal Origin

A. Any biological soil amendment of animal origin shall be handled, conveyed and stored in a manner and location so that it does not become a potential source of contamination to covered produce, food contact surfaces, areas used for a covered activity, water sources, water distribution systems, and other soil amendments. Agricultural teas that are biological soil amendments of animal origin may be used in water distribution systems provided that all other requirements of this rule are met.

B. Any treated biological soil amendment of animal origin shall be handled, conveyed and stored in a manner and location that minimizes the risk of it becoming contaminated by an untreated or in-process biological soil amendment of animal origin.

C. If a person knows or has reason to believe that any biological soil amendment of animal origin may have become contaminated, it shall be handled, conveyed and stored as if it was untreated.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-804. Prohibition of Application of Human Waste

The farm may not use human waste for growing covered produce, except sewage sludge biosolids used in accordance with the requirements of 40 CFR part 503(D), or equivalent regulatory requirements.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-805. Biological Soil Amendment of Animal Origin; Acceptable Treatment Processes; Microbial Standards

A. Each of the following treatment processes are acceptable for a biological soil amendment of animal origin that the farm applies in the growing of covered produce, provided that the resulting biological soil amendments are applied in accordance with the applicable requirements of Section R3-10-806:

1. A scientifically valid controlled physical process, chemical process, biological process, or a combination of scientifically valid controlled physical, chemical, or biological processes that has been validated to satisfy the microbial standard in subsection (B), for *Listeria monocytogenes (L. monocytogenes), Salmonella* species, and *E. coli* O157:H7; or
2. A scientifically valid controlled physical, chemical, or biological process, or a combination of scientifically valid controlled physical, chemical, or biological processes, that has been validated to satisfy the microbial standard in subsection (C), for *salmonella* species and fecal coliforms. Examples of scientifically valid controlled biological processes that meet the microbial standard in subsection (C), include both:
   a. Static composting that maintains aerobic conditions at a minimum of 131° F (55° C) for three consecutive days and is followed by adequate curing; and
   b. Turned composting that maintains aerobic conditions at a minimum of 131° F (55° C) for 15 days, which do not have to be consecutive, with a minimum of five turnings, and is followed by adequate curing.

B. The microbial standards for *L. monocytogenes, Salmonella* species, and *E. coli* O157:H7 in Table 1 apply to the treatment processes in subsection (A):

C. *Salmonella* species are not detected using a method that can detect three MPN *Salmonella* species per 4 grams (or milliliter, if liquid is being sampled) of total solids, and less than 1,000 MPN fecal coliforms per gram (or milliliter, if liquid is being sampled) of total solids.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

For the microorganism	The microbial standard is
1. *L. monocytogenes*	Not detected using a method that can detect one colony forming unit (CFU) per 5 grams (or milliliter, if liquid is being sampled) analytical portion.
2. *Salmonella* species	Not detected using a method that can detect three most probable numbers (MPN) per 4 grams (or milliliter, if liquid is being sampled) of total solids.
3. *E. coli* O157:H7	Not detected using a method that can detect 0.3 MPN per 1 gram (or milliliter, if liquid is being sampled) analytical portion.

Table 1.

Historical Note

New Table 1 made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-806. Application Requirements; Minimum Application Intervals

The farm shall apply the biological soil amendments of animal origin specified in the first column of Table 2 in accordance with the application requirements specified in the second column of Table 2 and the minimum application intervals specified in the third column of Table 2.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

If the biological soil amendment of animal origin is	Then the biological soil amendment of animal origin must be applied	And then the minimum application interval is
1.a. Untreated	In a manner that does not contact covered produce during application and minimizes the potential for contact with covered produce after	[Reserved].

	application	
1.b. Untreated	In a manner that does not contact covered produce during or after application	0 days.
2. Treated by a scientifically valid controlled physical, chemical, or biological process, or combination of scientifically valid controlled physical, chemical, or biological processes, in accordance with the requirements of Section R3-10-805(A)(2), to meet the microbial standard in Section R3-10-805(C).	In a manner that minimizes the potential for contact with covered produce during and after application	0 days.
3. Treated by a scientifically valid controlled physical, chemical, or biological process, or combination of scientifically valid controlled physical, chemical, or biological processes, in accordance with the requirements of R3-10-805(A)(1) to meet the microbial standard in R3-10-805(B).	In any manner with no restrictions	0 days.

Table 2.

Historical Note

New Table 2 made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-807. Biological Soil Amendment; Recordkeeping

A. The farm shall establish and keep records required under this Article in accordance with the requirements of Article 14.

B. For any biological soil amendment of animal origin the farm uses, it shall establish and keep the following records:

1. For a treated biological soil amendment of animal origin the farm receives from a third party, documentation, such as a certificate of conformance, at the time of delivery that both:
   a. The process used to treat the biological soil amendment of animal origin is a scientifically valid process that has been carried out with appropriate process monitoring; and
   b. The biological soil amendment of animal origin has been handled, conveyed and stored in a manner and location to minimize the risk of contamination by an untreated or in process biological soil amendment of animal origin.
2. For a treated biological soil amendment of animal origin the farm produces for its own farm or farms, documentation that process controls, which may include time, temperature, and turning, were achieved.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 9. PRODUCE SAFETY DOMESTICATED AND WILD ANIMALS

R3-10-901. Domesticated and Wild Animals; Inclusion; Exclusion

A. The requirements of this Article apply when a covered activity takes place in an outdoor area or a partially-enclosed building and when, under the circumstances, there is a reasonable probability that animals will contaminate covered produce.

B. The requirements of this Article do not apply either:

1. When a covered activity takes place in a fully-enclosed building; or
2. To fish used in aquaculture operations.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-902. Grazing and Working Animals; Animal Intrusion; Requirements

A. The farm shall take the steps set forth in subsection (B) if, under the circumstances, there is a reasonable probability that grazing animals, working animals, or animal intrusion will contaminate covered produce.

B. The farm shall both:

1. Assess the relevant areas used for a covered activity for evidence of potential contamination of covered produce as needed during the growing season, based on the covered produce, practices and conditions, and observations and experience; and
2. If significant evidence of potential contamination is found, the designated representative shall evaluate whether the covered produce can be harvested in accordance with the requirements of R3-10-1002 and take measures reasonably necessary during growing to assist the farm later during harvest when it shall identify, and not harvest, covered produce that is reasonably likely to be contaminated with a known or reasonably foreseeable hazard.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-903. Covered Farms; Taking of Threatened or Endangered Species; Managing Outdoor Growing Areas

A. Nothing in this Chapter authorizes the "taking" of or attempting to take threatened or endangered species as that term is defined by the federal Endangered Species Act.
B. Articles 2 through 17 do not require covered farms to take measures to exclude animals from outdoor growing areas, or to destroy animal habitat or otherwise clear farm borders around outdoor growing areas or drainages.
C. For purposes of this Section, "taking" includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting threatened or endangered species.

Historical Note
New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 10. PRODUCE SAFETY GROWING, HARVESTING, PACKING AND HOLDING ACTIVITIES

R3-10-1001. Growing, Harvesting and Packing of Covered and Excluded Produce

If the farm grows, harvests, packs or holds produce that is not covered in Articles 2 through 17 and also conducts any of those activities on covered produce, and the excluded produce is not grown, harvested, packed or held in accordance with Articles 2 through 17, the farm shall take measures during these covered activities, as applicable, to both:

1. Keep covered produce separate from excluded produce, except when covered produce and excluded produce are placed in the same container for distribution; and
2. Adequately clean and sanitize, as necessary, any food contact surfaces that contact excluded produce before using those food contact surfaces for covered activities on covered produce.

Historical Note
New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1002. Required Measures Prior to Harvest

The farm shall take all measures reasonably necessary to identify, and not harvest, covered produce that is reasonably likely to be contaminated with a known or reasonably foreseeable hazard, including steps to identify and not harvest covered produce that is visibly contaminated with animal excreta. At a minimum, identifying and not harvesting covered produce that is reasonably likely to be contaminated with animal excreta or that is visibly contaminated with animal excreta requires a visual assessment of the growing area and all covered produce to be harvested, regardless of the harvest method used.

Historical Note
New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1003. Handling Covered Produce During Covered Activities

The farm shall handle harvested covered produce during covered activities in a manner that protects against contamination with known or reasonably foreseeable hazards, for example, by avoiding, to the degree practicable, contact of cut surfaces of harvested produce with soil.

Historical Note
New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1004. Dropped Covered Produce; Requirements

A. The farm shall not distribute dropped covered produce.
B. For purposes of this Section, "dropped covered produce" means covered produce that drops to the ground before harvest and does not include:
1. Root crops that grow underground, such as carrots;
2. Crops that grow on the ground, such as cantaloupe; or
3. Produce that is intentionally dropped to the ground as part of harvesting, such as almonds.

Historical Note
New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1005. Food Packing and Packaging; Requirements

A. The farm shall use food-packing material that is adequate for its intended use, which includes being both:
1. Cleanable or designed for single use.
2. Unlikely to support growth or transfer of bacteria.
B. If the farm reuses food-packing material, it shall take adequate steps to ensure that food contact surfaces are clean, such as by cleaning food-packing containers or using a clean liner.
C. The farm shall package covered produce in a manner that prevents the formation of *Clostridium botulinum* toxin if that toxin is a known or reasonably foreseeable hazard, such as for mushrooms.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 11. PRODUCE SAFETY EQUIPMENT, TOOLS, BUILDINGS AND SANITATION

R3-10-1101. Equipment and Tools; Inclusion; Requirements

A. Equipment and tools subject to the requirements of this Article:
1. Are those that are intended to, or likely to, contact covered produce; and
2. Are those instruments or controls used to measure, regulate, or record conditions to control or prevent the growth of undesirable microorganisms of public health significance.

B. Examples include knives, implements, mechanical harvesters, waxing machinery, grading belts, sizing equipment, palletizing equipment, cooling equipment such as hydrocoolers, and equipment used to store or convey harvested covered produce, such as containers, bins, food-packing material, dump tanks, flumes, and vehicles or other equipment used for transport that are intended to, or likely to, contact covered produce.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1102. Buildings; Specific Inclusions

Buildings subject to the requirements of this Article include:
1. Any fully- or partially-enclosed building used for covered activities, including minimal structures that have a roof but do not have any walls; and
2. Storage sheds, buildings, or other structures used to store food contact surfaces, such as harvest containers and food-packing materials.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1103. Equipment and Tools; Cleaning and Maintenance

A. The farm shall use equipment and tools that are of adequate design, construction, and workmanship to enable them to be adequately cleaned and properly maintained.

B. Equipment and tools shall be:
1. Installed and maintained as to facilitate cleaning of the equipment and of all adjacent spaces;
2. Stored and maintained to protect covered produce from being contaminated with known or reasonably foreseeable hazards; and
3. Stored and maintained to prevent the equipment and tools from attracting and harboring pests.

C. Seams on food contact surfaces of equipment and tools shall be either smoothly bonded, or maintained to minimize accumulation of dirt, filth, food particles, and organic material and thus minimize the opportunity for harborage or growth of undesirable microorganisms.

D. The farm shall inspect, maintain, and clean and, when necessary and appropriate, sanitize all food contact surfaces of equipment and tools used in covered activities as frequently as reasonably necessary to protect against contamination of covered produce.

E. The farm shall maintain and clean all non-food-contact surfaces of equipment and tools subject to this Article used during harvesting, packing, and holding as frequently as reasonably necessary to protect against contamination of covered produce.

F. If the farm uses equipment such as pallets, forklifts, tractors, and vehicles in a manner that the equipment is intended to, or likely to, contact covered produce, it shall do so in a manner that minimizes the potential for contamination with known or reasonably foreseeable hazards of covered produce or food contact surfaces.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1104. Maintenance of Instruments and Controls

Instruments or controls the farm uses to measure, regulate, or record temperatures, hydrogen-ion concentration (pH), sanitizer efficacy or other conditions, in order to control or prevent the growth of undesirable microorganisms of public health significance, shall be:
1. Accurate and precise as necessary and appropriate in keeping with their purpose;
2. Adequately maintained; and
3. Adequate in number for their designated uses.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1105. Maintenance of Equipment Used for Transport of Covered Produce

Equipment that is subject to this Article that the farm uses to transport covered produce shall be both:
1. Adequately clean before use in transporting covered produce; and

2. Adequate for use in transporting covered produce.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1106. Buildings; Suitability; Drainage

A. Buildings shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for covered activities to reduce the potential for contamination with known or reasonably foreseeable hazards of covered produce or food contact surfaces. Buildings shall:
1. Provide sufficient space for placement of equipment and storage of materials;
2. Permit proper precautions to be taken to reduce the potential for contamination with known or reasonably foreseeable hazards of covered produce, food contact surfaces, or packing materials; and
3. Be designed to reduce the potential for contamination, including separating operations in which contamination is likely to occur by location, time, partition, enclosed systems or other methods.

B. The farm shall provide adequate drainage in all areas where normal operations release or discharge water or other liquid waste on the ground or floor of the building.

C. The farm shall implement measures to prevent contamination of its covered produce and food contact surfaces, as appropriate, in its buildings, considering the potential for contamination through both:
1. Floors, walls, ceilings, fixtures, ducts, or pipes; and
2. Drip or condensate.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1107. Buildings; Domesticated Animals

A. The farm shall take reasonable precautions to prevent contamination with known or reasonably foreseeable hazards of covered produce, food contact surfaces, and food-packing materials in fully-enclosed buildings from domesticated animals by either:
1. Excluding domesticated animals from fully-enclosed buildings where covered produce, food contact surfaces, or food-packing material is exposed; or
2. Separating domesticated animals in a fully enclosed building from an area where a covered activity is conducted on covered produce by location, time, or partition.

B. Guard or guide dogs may be allowed in some areas of a fully enclosed building if the presence of the dogs is unlikely to result in contamination of produce, food contact surfaces, or food-packing materials.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1108. Buildings; Pest Control; Routine Monitoring

A. The farm shall take those measures reasonably necessary to protect covered produce, food contact surfaces, and food-packing materials from contamination by pests in buildings, including routine monitoring for pests as necessary and appropriate.

B. For fully-enclosed buildings, the farm shall take measures to exclude pests from its buildings.

C. For partially-enclosed buildings, the farm shall take measures to prevent pests from becoming established in its buildings, such as by use of screens or by monitoring for the presence of pests and removing them when present.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1109. Toilet Facilities; Adequacy; Accessibility

A. The farm shall provide personnel with adequate, readily accessible toilet facilities, including toilet facilities readily accessible to growing areas during harvesting activities.

B. The farm's toilet facilities shall be designed, located, and maintained to:
1. Prevent contamination with human waste of covered produce, food contact surfaces, areas used for a covered activity, water sources, and water distribution systems;
2. Be directly accessible for servicing, be serviced and cleaned at a frequency sufficient to ensure suitability of use, and be kept supplied with toilet paper; and
3. Provide for the sanitary disposal of waste and toilet paper.

C. During growing activities that take place in a fully-enclosed building, and during covered harvesting, packing, or holding activities, the farm shall provide a hand-washing station that meets the requirements of R3-10-1110 and is in sufficiently close proximity to toilet facilities to make it practical for persons who use the toilet facility to wash their hands.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1110. Hand-Washing Facilities; Appropriate Disposal of Waste

A. The farm shall provide personnel with adequate, readily accessible hand-washing facilities during growing activities that take place in a fully-enclosed building, and during covered harvest, packing, or holding activities.

B. The farm's hand-washing facilities shall be furnished with all of the following:

1. Soap (or other surfactant, as appropriate);
2. Running water:
   a. From a municipal water provider; or
   b. That has no detectable generic *Escherichia coli* (*E. coli*) in 100 milliliters (mL) of agricultural water used to wash hands. The use of untreated surface water is prohibited.
3. Adequate drying devices, such as single service towels, sanitary towel service, or electric hand dryers.

C. The farm shall both:

1. Provide for appropriate disposal of waste, such as waste water and used single-service towels, associated with a hand-washing facility; and
2. Take appropriate measures to prevent waste water from a hand-washing facility from contaminating with known or reasonably foreseeable hazards, covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, and agricultural water distribution systems.

D. The farm shall not use antiseptic hand rubs as a substitute for soap, or other surfactant, as appropriate, and water.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1111. Sewage; Control and Disposal; Significant Events

A. The farm shall dispose of sewage into an adequate sewage or septic system or through other adequate means.

B. The farm shall maintain sewage and septic systems in a manner that prevents contamination by known or reasonably foreseeable hazards that would impact covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, and agricultural water distribution systems.

C. The farm shall manage and dispose of leakages or spills of human waste in a manner that:

1. Prevents contamination of covered produce; and
2. Prevents or minimizes contamination of any of the following:
   a. Food contact surfaces,
   b. Areas used for a covered activity,
   c. Agricultural water sources, or
   d. Agricultural water distribution systems.

D. After a significant event, such as flooding or an earthquake, that could negatively impact a sewage or septic system, the farm shall take appropriate steps to ensure that sewage and septic systems continue to operate in a manner that does not contaminate covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, or agricultural water distribution systems.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1112. Trash, Litter and Waste; Conveyance, Storage and Disposal

A. The farm shall convey, store, and dispose of trash, litter, and waste in order to both:

1. Minimize the potential for trash, litter, or waste to attract or harbor pests; and
2. Protect against contamination by known or reasonably foreseeable hazards that would impact covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, and agricultural water distribution systems.

B. The farm shall adequately operate systems for waste treatment and disposal so that they do not constitute a potential source of contamination in areas used for a covered activity.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1113. Plumbing; Adequacy of Size and Design

A farm's plumbing shall be of an adequate size and design and be adequately installed and maintained to:

1. Distribute water under pressure as needed, in sufficient quantities, in all areas where used for covered activities, for sanitary operations, or for hand-washing and toilet facilities;
2. Properly convey sewage and liquid disposable waste;
3. Avoid being a source of contamination to covered produce, food contact surfaces, areas used for a covered activity, or agricultural water sources; and

4. Prevent backflow from, or cross connection between, piping systems that discharge waste water or sewage and piping systems that carry water used for a covered activity, for sanitary operations, or for use in hand-washing facilities.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1114. Control of Animal Excreta from Domesticated Animals

If the farm has domesticated animals, to prevent contamination with animal waste, of covered produce, food contact surfaces, areas used for a covered activity, agricultural water sources, or agricultural water distribution systems, the farm shall both:

1. Adequately control their excreta and litter, and
2. Maintain a system for control of animal excreta and litter.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1115. Equipment, Tools, Buildings and Sanitation; Recordkeeping

A. The farm shall establish and keep records required under this Article in accordance with the requirements of Article 14.

B. The farm shall establish and keep documentation of the date and method of cleaning and sanitizing of equipment subject to this Article used in both:

1. Growing operations for sprouts; and
2. Covered harvesting, packing, or holding activities.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 12. PRODUCE SAFETY SPROUTS

R3-10-1201. Sprouts; Incorporation of Federal Regulations

A. The Department incorporates by reference 21 CFR 112, Subpart M, as published in 80 FR 74353 on November 27, 2015, and no later amendments or editions.

B. These sections apply to growing, harvesting, packing and holding of all sprouts, except soil- or substrate-grown sprouts harvested without their roots. The incorporated material is on file with the Arizona Department of Agriculture at 1688 W. Adams Street, Phoenix, AZ 85007.

C. The incorporated material, developed by the U.S. Food and Drug Administration, Department of Health and Human Services, is available from the U.S. Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-001. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at ⁄https://bookstore.gpo.gov or is available free of charge at ⁄http://gpo.gov (electronic Code of Federal Regulations).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 13. PRODUCE SAFETY ANALYTICAL METHODS

R3-10-1301. Analytical Methods; Incorporation of Federal Regulations

A. The Department incorporates by reference 21 CFR 112, Subpart N, as published in 80 FR 74353 on November 27, 2015, and no later amendments or editions.

B. These sections apply to methods to test agricultural water for specific microbial quality to ensure the water is consistently safe and of adequate sanitary quality for its intended use. The incorporated material is on file with the Arizona Department of Agriculture at 1688 W. Adams Street, Phoenix, AZ 85007.

C. The incorporated material, developed by the U.S. Food and Drug Administration, Department of Health and Human Services, is available from the U.S. Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-001. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at ⁄https://bookstore.gpo.gov or is available free of charge at ⁄http://gpo.gov (electronic Code of Federal Regulations).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 14. PRODUCE SAFETY RECORDS

R3-10-1401. Definition

Unless the context otherwise requires, “electronic record” means any combination of text, graphics, data, audio, pictorial, or other information representation in digital form that is created, modified, maintained, archived, retrieved, or distributed by a computer system.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1402. Recordkeeping; Signature by Responsible Party

A. Except as otherwise specified, all records required under Articles 2 through 17 shall:
1. Include, as applicable, all of the following:
   a. The name and location of the farm;
   b. Actual values and observations obtained during monitoring;
   c. An adequate description, such as the commodity name, or the specific variety or brand name of a commodity, and, when available, any lot number or other identifier, of covered produce applicable to the record;
   d. The location of a growing area or other area, such as a specific packing shed, applicable to the record; and
   e. The date and time of the activity documented.
2. Be created at the time an activity is performed or observed;
3. Be accurate, legible, and indelible; and
4. Be dated and signed or initialed by the person who performed the activity documented.

B. Records required under Sections R3-10-406, R3-10-504, Article 7, R3-10-807 and R3-10-1115 shall be reviewed, dated, and signed, within a reasonable time after the records are made, by a supervisor or designated representative, unless the farm's designated representative signed or initialed as the person performing the activity.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1403. Records; Off-Site Storage and Electronic Records

A. Offsite storage of records is permitted if the records can be retrieved and provided onsite within 24 hours of request for official review.

B. Electronic records are considered to be onsite at a farm if they are accessible from an onsite location at the farm.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1404. Existing Records; Duplication; Supplementation

A. Existing records that are kept to comply with other federal, state, or local laws, or for any other reason, do not need to be duplicated if they contain all of the required information and satisfy the requirements of Articles 2 through 17. Existing records may be supplemented as necessary to include all of the required information and satisfy the requirements of Articles 2 through 17.

B. The information required by Articles 2 through 17 does not need to be kept in one set of records. If existing records contain some of the required information, any new information required by Articles 2 through 17 may be kept either separately or combined with the existing records.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1405. Period for Maintenance of Records

A. A farm shall keep records required by this Article for at least two years past the date the record was created.

B. Farms that have a qualified exemption shall retain records that the farm relies on during the three-year period preceding the applicable calendar year to satisfy the criteria for a qualified exemption, in accordance with R3-10-403 and R3-10-405. Records supporting a qualified exemption shall be retained as long as necessary to support the farm's status during the applicable calendar year.

C. Records that relate to the general adequacy of the equipment or processes or records that relate to analyses, sampling, or action plans being used by a farm, including the results of scientific studies, tests, and evaluations, shall be retained at the farm for at least two years after the use of that equipment or processes, or records related to analyses, sampling, or action plans, is discontinued.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1406. Records; Acceptable Formats

A farm shall keep records as either:
1. Original records;
2. True copies, such as photocopies, pictures, scanned copies or other accurate reproductions of the original records; or
3. Electronic records.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1407. Availability and Accessibility of Records to Department

A. A farm shall have all records required under this Article readily available and accessible during the retention period for inspection and copying by an authorized employee or agent of the Department upon oral or written request, except that the farm shall have 24 hours to obtain records it keeps offsite and make them available and accessible to an authorized employee or agent of the Department for inspection and copying.

B. If the farm uses electronic techniques to keep records, or to keep true copies of records, or if the farm uses reduction techniques to keep true copies of records, it shall provide the records to an authorized employee or agent of the Department in a format in which the records are accessible and legible.

C. If the farm is closed for a prolonged period, the records may be transferred to some other reasonably accessible location but shall be returned to the farm within 24 hours for official review upon request.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1408. Disclosure of Records to Outside Parties

Records obtained by an authorized employee or agent of the Department are subject to disclosure pursuant to A.R.S. § 3-525.06.

A. *Documents, data and records received by the department and employees and agents of the department from a farm under this Article are public records and are subject to disclosure as provided by law, except for:*

1. Trade secrets, the disclosure of which would give an unfair advantage to competitors or would otherwise cause substantial harm to the farm's competitive position.

2. Financial information.

3. Documents, data and records derived from inspections and investigations under this Article.

B. *Any documents, data and records may be disclosed on a confidential basis to agencies or instrumentalities of any of the following that have data sharing agreements or data sharing credentials with the department or the United States food and drug administration:*

1. The United States.

2. This state.

3. Political subdivisions of this state with which the director has a memorandum of understanding for the purposes of this subsection.

4. Indian tribal governments in this state.

5. Any other state:

a. From which produce was transported into this state.

b. Into which produce is transported from this state.

C. *Any documents, data and records may be disclosed pursuant to:*

1. The order of a court of competent jurisdiction.

2. A signed and notarized release by a farm authorizing the disclosure of specific information to a specific person or persons for a specific reason or reasons.

D. *Aggregate statistical data derived from confidential information may be disclosed if the data does not identify, or enable the identification of, and is not attributable to, any individual farm. Information may not be disclosed pursuant to this subsection if a farm demonstrates that disclosure would give an unfair advantage to competitors or would otherwise cause substantial harm to the farm's competitive position.*

E. *A person, including a former employee or agent of the department or a person previously having an administrative duty for the department, who receives confidential information while an employee or agent of the department or while performing an administrative or enforcement duty for the department may not disclose that information except as provided in this Article.*

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 15. PRODUCE SAFETY VARIANCES

R3-10-1501. Request for Variance; Method of Request; Required Information

A. An entity located or conducting business in this state that is subject to regulation under Articles 2 through 17 may request a variance from one or more requirements by submitting an application to the Department demonstrating that both of the following apply:

1. The variance is necessary in light of local growing conditions; and
2. The procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under Section 402 of the Federal Food, Drug, and Cosmetic Act and provide the same level of public health protection as the requirements of Articles 2 through 17.

B. The application shall include all of the following:

1. A statement that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under Section 402 of the Federal Food, Drug and Cosmetic Act and provide the same level of public health protection as the requirements of Articles 2 through 17;
2. A description of the variance requested, including the farms to which the variance would apply and the provision(s) of Articles 2 through 17 to which the variance would apply; and

3. Information demonstrating that the procedures, processes, and practices to be followed under the variance both:
   a. Are reasonably likely to ensure that the produce is not adulterated under Section 402 of the Federal Food, Drug, and Cosmetic Act; and
   b. Will provide the same level of public health protection as the requirements of Articles 2 through 17.

C. The Department shall review the application and, after review, may submit the application to FDA for consideration as prescribed by 21 CFR Part 112(P). The Department shall provide a response to the applicant indicating its decision on whether to submit the application to the FDA.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 16. PRODUCE SAFETY INSPECTIONS, VIOLATIONS AND ENFORCEMENT

R3-10-1601. Definitions

These words are defined for use in this Article, unless the context otherwise requires:

1. "Egregious violation" means a practice, condition, or situation on a farm that is substantially likely to lead to serious adverse health consequences or death from the consumption of or exposure to covered produce.
2. "Grower-shipper" means a person who is engaged in this state in the business of packing, shipping, transporting or selling covered produce of which the person is a grower, producer or owner.
3. "Imminent public health hazard violation" means a practice, condition or situation on a farm or in a packing house that, if corrective action is not taken immediately, is substantially likely to lead to a potential source of contamination that may cause serious adverse health consequences or death from the consumption of or exposure to covered produce.
4. "Major violation" means a practice, condition or situation on a farm or in a packing house that, if corrective action is not taken, may increase the risk of contamination to covered produce.
5. "Minor violation" means a practice, condition or situation on a farm or in a packing house that will not increase the risk of contamination to covered produce.
6. "Regulated person" means a grower, grower-shipper, harvester, packer, cooler or holder that is a farm, as defined in R3-10-201 and is subject to any of the requirements of Articles 2 through 17.
7. "Significant violation" means a practice, condition or situation on a farm or in a packing house that, if corrective action is not taken, is reasonably likely to increase the risk of contamination to covered produce.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1602. Inspection; Procedure; Conduct

A. The Department shall conduct inspections pursuant to the procedure outlined in A.R.S. § 41-1009.

B. The designated representative of the farm shall provide information at the time of the inspection regarding known entities associated with the farm that are subject to inspection.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1603. Initial Inspection

A. For an initial inspection, if the inspector observes a condition indicating the regulated person is not in compliance, and the condition is not egregious or an imminent health hazard, the inspector may provide outreach and education resources as appropriate for:
   1. Training;
   2. Guidance documents;
   3. Technical assistance network; and
   4. On-farm direct technical assistance.

B. During an initial inspection, if the inspector observes a condition that likely has caused an imminent public health hazard and the covered produce is still under the control of the regulated person, the inspector may take immediate action as follows:
   1. Discuss observed conditions with the designated representative;
   2. Document findings on the inspection form;
   3. Determine a timeline for corrective actions and preventative measures;
   4. Evaluate the covered produce for embargo and disposal in conjunction with the Associate Director;
   5. Schedule a reinspection within 3 to 10 days; and
   6. Forward the findings to the Associate Director to determine if any other enforcement action is necessary. The Associate Director may also communicate findings to FDA, Arizona Department of Health Services, county departments of health or other agencies as appropriate.

C. During an initial inspection, if the inspector observes conditions indicating an egregious situation and the covered produce has left the control of the regulated person, the inspector may immediately take any of the following actions:
   1. Discuss observed conditions with the designated representative;
   2. Document findings on the inspection form;

3. Determine a timeline for corrective actions and preventative measures;
4. Initiate a recall, embargo or stop sale in conjunction with the Associate Director;
5. Schedule a reinspection within 3 to 10 days; or
6. Forward the findings to the Associate Director to determine if any other enforcement action is necessary. The Associate Director may also communicate findings to FDA, Arizona Department of Health Services, county departments of health or other agencies as appropriate.

D. In order to address any condition described in subsections (B) and (C), the regulated person or anyone controlling the covered produce may take immediate corrective action and stop the harvest or institute a voluntary withdrawal of the affected covered produce as appropriate.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1604. Routine Inspection, Reinspection, or for Cause Inspection

A. For a routine inspection, reinspection or for cause inspection, if the inspector observes conditions that will not cause produce contamination, but require corrective action, the inspector may take any of the following actions:
1. Discuss observed conditions with the designated representative;
2. Document findings on the inspection form;
3. Agree on a timeline for corrective actions and preventative measures; or
4. Determine if any further training, guidance documents or technical assistance is necessary.

B. During a routine inspection, reinspection or for cause inspection, if the inspector observes conditions that may cause produce contamination, the inspector may take any of the following actions:
1. Discuss observed conditions with the designated representative;
2. Document findings on the inspection form;
3. Determine if any covered produce has left the control of the regulated person;
4. Determine a timeline for corrective actions and preventative measures;
5. Schedule a reinspection within 3 to 10 days or a time appropriate to the growing season; or
6. Forward the findings to the Associate Director to determine if any other enforcement action is necessary. The Associate Director may also communicate findings to FDA, Arizona Department of Health Services, county departments of health or other agencies as appropriate.

C. During a routine inspection, reinspection or for cause inspection, if the inspector observes conditions that indicate an imminent public health hazard and the covered produce is still under the control of the regulated person, the inspector may immediately take any of the following actions:
1. Discuss observed conditions with the designated representative;
2. Document findings on the inspection form;
3. Determine a timeline for corrective actions and preventative measures;
4. Evaluate the covered produce for embargo and disposal in conjunction with the Associate Director;
5. Schedule a reinspection within 3 to 10 days; or
6. Forward the findings to the Associate Director to determine if any other enforcement action is necessary. The Associate Director may also communicate findings to FDA, Arizona Department of Health Services, county departments of health or other agencies as appropriate.

D. During a routine inspection, reinspection or for cause inspection, if the inspector observes conditions indicating an egregious situation and the covered produce has left the control of the regulated person, the inspector may immediately take any of the following actions:
1. Discuss observed conditions with the designated representative;
2. Document findings on the inspection form;
3. Determine a timeline for corrective actions and preventative measures;
4. Initiate a recall, embargo or stop sale in conjunction with the Associate Director;
5. Schedule a reinspection within 3 to 10 days; or
6. Forward the findings to the Associate Director to determine if any other enforcement action is necessary. The Associate Director may also communicate findings to FDA, Arizona Department of Health Services, county departments of health or other agencies as appropriate.

E. In order to address any condition described in subsection (C) and (D), the regulated person or anyone controlling the covered produce may take immediate corrective action and stop the harvest or institute a voluntary withdrawal of the affected covered produce as appropriate.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1605. Egregious Violation

The following is a nonexclusive list of practices, conditions or situations on a farm that is substantially likely to lead to serious adverse health consequences or death from the consumption of or exposure to covered produce. A regulated person shall not:
1. Allow the harvest, packing or distribution of covered produce that is visibly contaminated with animal or human excreta;

2. Allow the harvest, packing or distribution of covered produce that is visibly contaminated with sewage, or the contents of a septic system or toilet facilities; or
3. Allow the harvest, packing or distribution of covered produce that has had raw manure in direct contact with the edible portion of the plant.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1606. Imminent Public Health Hazard Violation

The following is a nonexclusive list of practices, conditions or situations on a farm that, if corrective action is not taken immediately, are substantially likely to lead to a potential source of contamination that may cause serious adverse health consequences or death from the consumption of or exposure to covered produce. A regulated person shall not:

1. Allow the harvest, packing or distribution of covered produce that is substantially likely to be contaminated with animal or human excreta;
2. Allow the harvest, packing or distribution of covered produce that is reasonably likely to be contaminated with sewage, or the contents of a septic system or toilet facilities; or
3. Allow the harvest, packing or distribution of covered produce that has had raw manure in direct contact with the edible portion of the plant.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1607. Significant Violation

The following is a nonexclusive list of practices, conditions or situations on a farm that, if corrective action is not taken, are reasonably likely to increase the risk of contamination to covered produce. A regulated person shall not:

1. Use measures that fail to prevent contamination of covered produce and food contact surfaces with undesirable microorganisms of public health significance from a person with an applicable health condition;
2. Allow the use of improper hygienic practices by personnel who handle or contact covered produce or food contact surfaces;
3. Use untreated, improperly treated or contaminated biological soil amendments of animal origin;
4. Allow the harvest of covered produce that is reasonably likely to be contaminated with known or reasonably foreseeable hazards as the result of an animal intrusion;
5. Clean equipment and tools in a manner that fails to protect covered produce from being contaminated with known or reasonably foreseeable hazards;
6. Dispose of waste from toilet facilities, in a manner that fails to protect covered produce, food contact surfaces, agricultural water sources, or agricultural water distribution systems from being contaminated with known or reasonably foreseeable hazards;
7. Improperly manage grazing animals, working animals and domestic animals on areas where covered activities occur; or
8. Improperly dispose of sewage or improperly control sewage in a manner that fails to protect covered produce, food contact surfaces, agricultural water sources, or agricultural water distribution systems from being contaminated with known or reasonably foreseeable hazards.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1608. Major Violation

The following is a nonexclusive list of practices, conditions or situations on a farm that, if corrective action is not taken, may increase the risk of contamination to covered produce. A regulated person shall not:

1. Store or maintain packaging materials in a manner that fails to protect covered produce from being contaminated by known or reasonably foreseeable hazards;
2. Store or maintain equipment and tools in a manner that fails to protect covered produce from being contaminated by known or reasonably foreseeable hazards;
3. Allow personnel to perform assigned duties without adequate or appropriate training;
4. Allow personnel to perform assigned duties without proper food safety apparel or hair restraints;
5. Allow visitors to contaminate covered produce or food contact surfaces by known or reasonably foreseeable hazards;
6. Allow a person with an applicable health condition to handle or contact covered produce or food contact surfaces;
7. Allow a person who has not properly used toilet or hand washing facilities to handle or contact covered produce or food contact surfaces;
8. Dispose of trash from hand washing facilities in a manner that fails to protect covered produce, food contact surfaces, agricultural water sources, or agricultural water distribution systems from being contaminated with known or reasonably foreseeable hazards;
9. Improperly control or improperly dispose of trash, litter and waste in areas used for covered activities;
10. Improperly control or improperly dispose of trash from toilet and hand washing facilities in areas not used for covered activities, but in areas that are part of the farm;
11. Improperly maintain and service toilet facilities to ensure suitability of use;
12. Improperly maintain and service hand washing facilities to ensure suitability of use;

13. Improperly control pests in buildings in a manner that fails to protect covered produce from being contaminated by known or reasonably foreseeable hazards; or
14. Complete records prior to the documented activity being performed.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1609. Minor Violation

The following is a nonexclusive list of practices, conditions or situations on a farm that will not increase the risk of contamination to covered produce. A regulated person shall:

1. Store and maintain complete records for the proper time period as required by Articles 4 through 14; and
2. Control and properly dispose of litter in areas not used for covered activities but in areas that are part of the farm.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1610. Unlisted Violation; Classification

The Department shall classify a violation of Articles 4 through 14 or of A.R.S. Title 3, Chapter 3, Article 4.1, not specifically listed as egregious, imminent health hazard, significant, major or minor violation, according to the nature and urgency of the violation and the risk to public health and safety.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1611. Violation; Reclassification; Factors

A significant, major or minor violation may be classified as a higher or lower violation based on the nature and urgency of the violation and the risk to public health and safety.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1612. Aggravating and Mitigating Circumstances; Factors

A. Depending on any aggravating circumstances surrounding a significant, major or minor violation, such as intentional conduct or inaction that results in failure to maintain standards, the violation may be classified as a higher violation.

B. A violation may be classified as a lower violation, or in the case of a minor violation, be classified as no violation, depending on any mitigating circumstances surrounding a significant, major or minor violation. Mitigating circumstances may include: correcting a violation at the time of inspection; immediately addressing or providing a remedy for the violation; conducting immediate onsite retraining; or implementing additional measures or practices.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1613. Repeat Violations; Penalty

A. During a routine inspection, reinspection or for cause inspection, if the inspector observes conditions indicating the regulated person has been previously notified of the same or similar violation, the inspector may take any of the following actions:
1. Discuss observed conditions with the regulated person;
2. Document findings on the inspection form;
3. Determine a timeline for corrective actions and preventative measures; or
4. Forward the findings to the Associate Director to determine if any other enforcement action is necessary.

B. The Department may assess a penalty for a repeat significant or major violation within three years from the date the first same or similar violation occurred. The amount of the penalty shall be progressively graduated and shall be based on the nature and urgency of the violation and the risk to public health and safety as follows:
1. For a first repeat significant violation, up to $100;
2. For a second repeat significant violation, up to $200;
3. For a subsequent repeat significant violation, up to $400;
4. For a second repeat major violation, up to $50; and
5. For a subsequent repeat major violation, up to $100.

C. The Department may assess a penalty for a third or subsequent repeat minor violation of the same or similar type within three years from the date the first same or similar violation occurred as follows:
1. For a third repeat minor violation, up to $25; and
2. For a subsequent repeat minor violation, up to $50.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1614. Civil Penalties

A. The Director may assess a civil penalty of up to:
1. $1,000 for each egregious violation; and
2. $750 for each imminent public health hazard violation.

B. The amount of the civil penalty shall be progressively graduated according to the nature and urgency of the violation and the risk to public health and safety.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1615. Violation; Appeal

A person who violates Articles 2 through 17 of this Article or rules adopted pursuant to Articles 2 through 17 of this Article may request a hearing before an administrative law judge pursuant to A.R.S. Title 41, Chapter 6, Article 10. The decision of the administrative law judge is subject to review by the Director as provided by A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

ARTICLE 17. PRODUCE SAFETY WITHDRAWAL OF QUALIFIED EXEMPTION

R3-10-1701. Withdrawal of Qualified Exemption; Incorporation of Federal Regulations

A. The Department incorporates by reference 21 CFR 112(R), as published in 80 FR 74353 on November 27, 2015, and no later amendments or editions.

B. These sections apply to the process for the FDA to withdraw a qualified exemption. A qualified exemption may be granted to a farm based on average annual monetary value of all food sold and direct farm marketing. A qualified exemption may be withdrawn based on specific circumstances outlined in 21 CFR 112, Subpart R. The incorporated material is on file with the Arizona Department of Agriculture at 1688 W. Adams Street, Phoenix, AZ 85007.

C. The incorporated material, developed by the U.S. Food and Drug Administration, Department of Health and Human Services, is available from the U.S. Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-001. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at ﷺhttps://bookstore.gpo.gov or is available free of charge at ﷺhttp://gpo.gov (electronic Code of Federal Regulations).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1702. Withdrawal of Qualified Exemption; FDA

A. The FDA may withdraw a farm's qualified exemption pursuant to 21 CFR 112(R). For example, an exemption may be withdrawn by FDA:
1. In the event of an active investigation of a foodborne illness outbreak that is directly linked to the farm.
2. If FDA determines that it is necessary to protect the public health and prevent or mitigate a foodborne illness outbreak based on conduct or conditions associated with the qualified farm that are material to the safety of the food that would otherwise be covered produce grown, harvested, packed or held at the farm.

B. Requirements regarding notice, appeals, hearings, timeframes, decisions, revocation and reinstatement for an exemption withdrawn by FDA are governed by 21 CFR 112(R).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1703. Withdrawal of Qualified Exemption; Department

The Department may withdraw a farm's qualified exemption for noncompliance as follows:
1. Failure to satisfy the requirements, terms and conditions prescribed by R3-10-403;
2. Failure to satisfy the requirements regarding food packaging labels as required by R3-10-404;
3. Failure to maintain adequate records necessary to demonstrate that the farm satisfies the criteria for a qualified exemption as prescribed by R3-10-405;
4. Failure to apply for the exemption on a form issued by the Associate Director;
5. Failure to receive approval for the exemption; or
6. Failure to maintain and demonstrate compliance with the requirements pursuant to A.R.S. § 3-525.03 and administrative rules adopted pursuant to A.R.S. § 3-525.08.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1704. Change in Eligibility

If a farm's eligibility for a qualified exemption changes, or if its qualified exemption is withdrawn by either the Department, pursuant to A.R.S. § 3-525.03 or by the FDA as outlined in 21 CFR 112(R), the farm will be considered "covered" and will be subject to all requirements of 21 CFR 112 and Articles 2 through 17.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1705. Withdrawal of Qualified Exemption; Department; Orders

The Director shall issue an order to withdraw the exemption to the owner, operator, or agent in charge of the farm. The order shall:

1. Be in writing, signed and dated by the Director;
2. Include specific information related to the reason for the withdrawal;
3. Outline requirements regarding compliance with the order; and
4. Outline opportunities for appeal.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1706. Administrative Hearing Procedures; Appeals

The owner, operator, or agent in charge of a farm that receives an order to withdraw a qualified exemption applicable to that farm shall either comply with the requirements of the order or appeal the order pursuant to Arizona administrative hearing procedures outlined in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

R3-10-1707. Qualified Exemption; Reinstatement

If the Director determines that a farm has adequately resolved any problems or conditions that resulted in withdrawal of the exemption, and that continued withdrawal of the exemption is not necessary to protect the public health or prevent or mitigate a food borne illness or outbreak, the Director may, on the Director's own initiative or at the request of the farm, reinstate the qualified exemption.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 681, effective August 19, 2019; filed in the Office March 27, 2020 (Supp. 20-1).

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.

3-525. Definitions

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the citrus, fruit and vegetable division of the department.

2. "Farm" has the same meaning prescribed in 21 Code of Federal Regulations section 112.3 and includes production farms and harvesting, holding and packing operations.

3. "Harvesting":

(a) Has the same meaning prescribed in 21 Code of Federal Regulations section 112.3 and is limited to activities performed on produce without additional manufacturing or processing on a farm.

(b) Includes:

(i) Activities that are traditionally performed on farms for the purposes of removing produce from the place it was grown or raised and preparing it for use as food.

(ii) Separating the edible portion of the produce from the crop plant and removing or trimming part of the produce.

(iii) Cooling, field coring, gathering, hulling, shelling, removing stems from, trimming outer leaves from and washing produce grown on a farm.

(c) Does not include activities that transform produce into a processed food.

4. "Holding":

(a) Has the same meaning prescribed in 21 Code of Federal Regulations section 112.3.

(b) Includes:

(i) Storage of produce in facilities such as warehouses and cold storage facilities.

(ii) Activities performed incidental to the storage of produce, such as fumigating citrus during storage.

(iii) Activities performed as a practical necessity for the distribution of produce, such as blending produce and breaking down pallets.

(c) Does not include activities that transform produce into a processed food.

5. "Packing":

(a) Has the same meaning prescribed in 21 Code of Federal Regulations section 112.3.

(b) Includes:

(i) Placing produce into a container.

(ii) Repacking.

(iii) Activities performed incidental to packing or repacking produce, such as sorting, culling, grading and weighing or conveying and other incidental activities performed for the safe or effective packing or repacking of produce.

(c) Does not include:

(i) Activities that transform produce into a processed food.

(ii) Packaging produce for retail sale.

6. "Produce":

(a) Means any harvested part of a fruit or vegetable that is consumed raw, including mushrooms, sprouts, tree nuts and herbs, and that is subject to the requirements of the produce safety rule as provided by 21 Code of Federal Regulations sections 112.1 and 112.2.

(b) Does not include food grains or seeds of arable crops.

7. "Produce safety rule" means the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) 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).

3-525.01. Produce safety rule; state administration; powers and duties; advisory council

A. The department is designated as the agency for this state for all purposes of the produce safety rule.

B. The director may:

1. Negotiate, consult and collaborate with the United States food and drug administration and do all things consistent with this article that are necessary to obtain and maintain federal approval and delegation of authority to regulate produce that is subject to the produce safety rule with respect to produce that is grown, harvested, packed or held in this state.

2. Consult, cooperate, collaborate and, if necessary, enter into formal intergovernmental and interagency agreements and memoranda of understanding with federal agencies, with agencies, instrumentalities and political subdivisions of this state and with nongovernmental organizations concerning the application of the produce safety rule as necessary to administer this article.

3. Apply for, accept and spend federal and other nonstate financial aid and allowances that may be available for the purpose of administering this article.

4. Accept advisory, technical and training assistance in planning and otherwise developing the produce safety activities under this article, including curricular and instructional materials, equipment and other materials and assistance that are useful for administering this article.

5. Facilitate cooperation among federal, state, local and private entities to help coordinate and enhance the protection of agriculture and food systems.

6. Use any available federal process to petition for a variance, waiver or exemption from federal requirements that may be desirable, advantageous or necessary to accommodate state or local conditions or considerations.

7. To minimize the economic and operational burdens created from multiple food safety program audits or inspections, use any available federal process to obtain approval from the United States food and drug administration that the standards of a food safety program under the department's authority align with the produce safety rule such that the program satisfies the produce safety rule's requirements.

C. The associate director shall:

1. Establish training activities and outreach and technical assistance programs to encourage the acceptance, cooperation, participation and compliance by owners, lessees, operators and designated representatives of farms, harvesters, holders, packers, commodity groups and other members of the regulated community.

2. Establish a continuing program for training employees and agents of the department to ensure a high level of knowledge of the law and skill in identifying, assessing and addressing risks to public health with the least disruption of a safe food supply.

3. Plan, develop, coordinate and administer the state program for administering the requirements of this article, including technical, laboratory and training activities.

D. As authorized by the director, the associate director may:

1. Use the cooperative extension service under chapter 1, article 3 of this title to the extent possible to accomplish the purposes of this article.

2. Issue certificates as evidence of completion of formal training programs by owners, lessees, operators and designated representatives of farms.

E. The citrus, fruit and vegetable advisory council shall assist and advise the director and associate director on matters under this article pursuant to article 4.3 of this chapter.

3-525.05. Production and harvesting standards; violations; corrective actions; civil penalty; appeals

A. Consistent with the produce safety rule, the director shall administer science-based minimum standards for the safe production and harvesting of produce to minimize the risk of serious adverse health consequences or death.

B. If the director finds that produce is being grown, harvested, packed or held in violation of this article and rules adopted pursuant to this article, the director may consult and coordinate with applicable federal, state, tribal and local officials to produce a corrective action plan that includes reinspection, education, training and alternate enforcement approaches with the goal of addressing the present violation and preventing future violations.

C. The director shall adopt rules to address, correct and remediate violations of this article and rules adopted pursuant to this article that are progressively graduated according to the nature and urgency of the violation and the risk to public health and safety.

D. To remedy violations that are associated with risks or hazards to public health and to prevent the entry of contaminated produce into the marketplace, the director may take any action to enforce this article and rules adopted pursuant to this article, including:

1. A stop sale order.

2. The seizure and embargo of offending produce.

E. The director may assess a civil penalty of not more than one thousand dollars for each violation of this article or a rule adopted pursuant to this article. The department shall transmit any monies received under this section to the state treasurer for deposit in the produce safety trust fund established by section 3-525.02.

F. A person who violates this article or rules adopted pursuant to this article may request a hearing before an administrative law judge pursuant to title 41, chapter 6, article 10. The decision of the administrative law judge is subject to review by the director as provided by title 41, chapter 6, article 10.

3-525.08. Rules

A. Pursuant to section 3-527.02, the associate director may recommend to the director for adoption rules that are not in conflict with this article as the associate director considers to be necessary to carry out the purposes of this article.

B. At least thirty days before any hearing at which a new rule or a change in an existing rule will be considered, the director shall send a copy of the notice to persons or entities that have requested notice for the purposes of this subsection.

C. Rules adopted pursuant to this section are exempt from the provisions of title 41, chapter 6 relating to administrative procedure.

E-4.

ARIZONA DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 6, Articles 1-4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2205

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **ARIZONA DEPARTMENT OF CHILD SAFETY**
Title 21, Chapter 6, Articles 1-4

Summary

This Five-Year Review Report (5YRR) from the Department of Child Safety (Department) relates to seventy-four (74) rules in Title 21, Chapter 6, Articles 1-4 regarding Foster Home Licensing. Specifically, the Articles cover the following:

- Article 1 - Definitions
- Article 2 - Licensing Agency Requirements for Foster Home Licensing Agencies
- Article 3 - Licensing Requirements for Foster Parents
- Article 4 - The Licensing Process for Foster Parents

In the prior 5YRR for these rules, which was approved by the Council in November 2019, the Department did not propose a course of action for these rules.

Proposed Action

In the current report the Department proposes to amend R21-6-308 to correct the title of this section to "Discipline and Behavior Management". The Department also proposes to amend R21-6-410(B)(7) to clarify that the foster parent shall work with the licensing agency to request an amendment to modify a license when there is an addition of a household member; including

the birth of a child or adoption of a child. The Department proposes to submit a Notice of Final Rulemaking to the Council by August 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

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 Department Office of Licensing and Regulation (OLR) oversees the licensing and regulation of foster homes and the foster home licensing agencies. Foster home licensing agencies are private organizations generally contracted with the Department to oversee the licensing of foster care providers. The cost bearers and beneficiaries benefit from these rules as the rules provide foster home licensing agencies, applicants, foster parents, and in-home providers with information about what is expected of them and the licensing process. Foster home licensing agencies are not charged a fee for contracting with the Department. Foster home applicants are not charged a fee for applying, renewing or amending their license. The Department has contracted 28 Foster Home Licensing Agencies. On June 30, 2024, there were 1,819 licensed foster homes.

According to the Department, stakeholders include:

- Businesses that contract with the Department;
- Businesses contracting with other entities to provide aid in the placement of children that cannot remain in their natural home;
- General public who may wish to apply for a foster home license;
- Children in out-of-home care;
- Parents of children in out-of-home care; and
- The Department.

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 current rules pose the minimum cost and burden on business, the regulated public, and on the general public. Any costs related to the implementation of these rules are associated with monitoring licensees and ensuring that they are abiding by these rules as described in the economic, small business, and consumer impact statement. Additionally, foster home license applicants are not charged a fee to operate a licensed foster home. In fact, the Department states, those who are granted a license are reimbursed for the services they provide via federal and state funds. It is the Department's belief that any cost associated with the rule is offset by the greater benefit of ensuring the safety and protection of Arizona children.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are generally clear, concise, and understandable except for the following:

- **R21-6-308**
  - The heading of this Section is "Positive Discipline"; however, rules in this Section are addressing discipline and behavior management.
- **R21-6-410(B)(7)**
  - This subsection incorrectly says the foster parent shall work with the licensing agency to modify a license when an adopted child is born. ("Addition of a household member; including the birth of an adopted child;") This should be corrected to say " ... the birth of a child or adoption of a child."

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently 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?

The Department indicates the following federal laws are applicable to these rules: 42 U.S.C. 622, 45 U.S.C. 623, 45 U.S.C. 671, 45 U.S.C. 672, 45 U.S.C. 675, U.S.C. 5113, and 45 CFR 1356.30. The Department indicates the rules are not more stringent than federal law.

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?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the rules do not use a general permit as foster home licenses are exempt from A.R.S. § 41-1037 and do not require a general permit. Specifically, A.R.S. § 41-1037(A)(5) allows for an exemption when the license is issued pursuant to A.R.S. § 8-503. A.R.S. § 8-503(A)(4)(b) allows the Department to establish rules, regulations and standards for licensing of foster homes. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to seventy-four (74) rules in Title 21, Chapter 6, Articles 1-4 regarding Foster Home Licensing. Specifically, the Articles cover the following: Article 1 - Definitions; Article 2 - Licensing Agency Requirements for Foster Home Licensing Agencies; Article 3 - Licensing Requirements for Foster Parents; Article 4 - The Licensing Process for Foster Parents.

The Department proposes to amend R21-6-308 to correct the title of this section to "Discipline and Behavior Management". The Department also proposes to amend R21-6-410(B)(7) to clarify that the foster parent shall work with the licensing agency to request an amendment to modify a license when there is an addition of a household member; including the birth of a child or adoption of a child. The Department proposes to submit a Notice of Final Rulemaking to the Council by August 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT of CHILD SAFETY

David Lujan, Cabinet Executive Officer/Executive Deputy Director
Katie Hobbs, Governor

August 30, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 6, Articles 1-4 Five-Year-Review Report

Dear Chairperson Klein:

Please find enclosed the Five-Year-Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 6, Articles 1-4 which is due on August 30, 2024.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Melissa Compian at Melissa.Compian@azdcs.gov.

Sincerely,

David Lujan

David Lujan
Cabinet Executive Officer/Executive Deputy Director

Enclosure

P.O. Box 6030 ♦ Site Code C010-23 ♦ Phoenix, AZ 85005-6030
Telephone (602) 255-2500

Arizona Department of Child Safety

5 YEAR REVIEW REPORT

21 A.A.C. 06

Title 21. Child Safety

Chapter 6. Department of Child Safety

Foster Home Licensing

Articles 1-4

August 2024 (Resubmitted January 21, 2025)

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. § § 8-502, 8-503, 8-506, 8-507, 8-509, 8-511, 8-514, 8-453(A)(11), 8-453(B)(2), 8-529 and 8-530.

2. The objective of each rule:

Article 1. Definitions

Rule	Objective
R21-6-101. Definitions	The objective of this rule is to provide a uniform set of definitions used throughout this Chapter.

Article 2. Licensing Agency Requirements for Foster Home Licensing Agencies

Rule	Objective
R21-6-201. Minimum Qualifications for an Applicant	The objective of this rule is to advise the licensing agency of their responsibility to ensure that an applicant's rights are met.
R21-6-202. Professional Judgement	The objective of this rule is to define how the licensing agency will use "professional judgement".
R21-6-203. Conflicts of Interest	The objective of this rule is to address how licensing agencies will handle conflict of interest as it pertains to the families they work with.
R21-6-204. Rights of the Applicant and Foster Parent	The objective of this rule is to establish the licensing agency's responsibility to inform and ensure the rights of foster parents or applicants.

R21-6-205. Licensing Agency Responsibility; Application for an Initial Foster Home License	The objective of this rule is to inform the licensing agency of their responsibilities when processing an initial foster home license application.
R21-6-206. Licensing Agency Foster Home Study and Assessment	The objective of this rule is to outline the licensing agency's responsibility to conduct an assessment and complete a home study of those applying for a foster home license.
R21-6-207. Request for Additional Information During Licensing Review	The objective of this rule is to state the licensing agency's responsibility to gather and provide OLR more information as needed.
R21-6-208. Statement of Understanding	The objective of this rule is to indicate at when the licensing agency must review the Statement of Understanding with the foster parent.
R21-6-209. Verification of Equipment at Time of Placement	The objective of this rule is to state that it is the licensing agency's responsibility to ensure the foster home has the appropriate equipment.
R21-6-210. Approval of Additional Placements from Another Child Placing Agency	The objective of this rule is to establish when the licensing agency must obtain prior approval from DCS regarding the placement of children.
R21-6-211. Life Safety Inspection	The objective of this rule is to inform the licensing agency of their responsibilities as they pertain to the inspection of the foster home.
R21-6-212. Training Reporting Update	The objective of this rule is to state the agency's responsibility to update training information in DCS's electronic database.

R21-6-213. Application for a Renewal License	The objective of this rule is to outline the licensing agency's responsibilities when processing a foster home renewal application.
R21-6-214. Application or License Reinstatement	The objective of this rule is to define "reinstatement" and provisions for reinstating a foster home license.
R21-6-215. The Licensing Record	The objective of this rule is to establish the licensing agency's responsibilities and requirements of record maintenance.
R21-6-216. Amending the License	The objective of this rule is to require the licensing agency to inquire of any changes within the foster home and follow the process for amending a license.
R21-6-217. Evaluating Changes in Household Composition	The objective of this rule is to outline the licensing agency's responsibility to assess the foster home when there is a change in household composition.
R21-6-218. Routine Monitoring and Verification of Ongoing Compliance	The objective of this rule is to establish the licensing agency's monitoring responsibilities.
R21-6-219. Corrective Action Plan	The objective of this rule is to establish the licensing agency's responsibilities with monitoring corrective action plans.
R21-6-220. Notification Requirements; Unusual Incident	The objective of this rule is to establish the licensing agency's responsibility to comply with reporting incidents to the child placing agency and OLR.
R21-6-221. Allegations of Child Abuse or Neglect; Licensing Complaints	The objective of this rule is to identify the licensing agency's responsibilities in reference to complaints and investigations of a foster home.

R21-6-222. Waiver of Non-Safety Licensing Requirements for Kinship Care	The objective of this rule is to detail what criteria OLR will consider waiving when a kinship caregiver is applying for a foster home license.

Article 3. Licensing Requirements for Foster Parents

Rule	Objective
R21-6-301. General Requirements for Foster Parents	The objective of this rule is to provide the general criteria required of persons applying for a foster home license and general criteria required to maintain a foster home license.
R21-6-302. Requirements for Household Members	The objective of this rule is to identify the criteria required of other household members residing within the foster home.
R21-6-303. Training Requirements	The objective of this rule is to outline training requirements for an initial foster home license.
R21-6-304. Life Safety Inspection	The objective of this rule is to indicate the foster parent's and applicant's responsibility to comply with inspections, per Title 21, Chapter 8, of the foster parent's or applicant's home.
R21-6-305. Nurturing Responsibilities	The objective of this rule is to describe the nurturing responsibilities the foster parent is expected to provide.
R21-6-306. Supervisory Responsibilities	The objective of this rule is to address the care and supervision the foster parent is expected to provide.
R21-6-307. Reasonable and Prudent Parenting Standard	The objective of this rule is to describe the foster parent's responsibility to promote normalcy for children placed in their care.
R21-6-308. Positive Discipline	The objective of this rule is to explain to foster parents the Department's expectations of effective discipline for foster children.

R21-6-309. Capacity Requirements	The objective of this rule is to specify the number of children that can be cared for at the same time within the foster home.
R21-6-310. Sleeping Arrangements	The objective of this rule is to detail the acceptable sleeping arrangements for foster children.
R21-6-311. Bedrooms, Beds and Bedding	The objective of this rule is to inform foster parents of the bedroom and sleeping materials a foster parent must make available to a foster child.
R21-6-312. Meals and Nutritional Needs	The objective of this rule is to inform foster parents of their responsibility to meet a foster child's meal and nutritional needs.
R21-6-313. Hygiene and Daily Needs	The objective of this rule is to establish the foster parent's responsibility to meet a foster child's hygiene and daily needs.
R21-6-314. Health and Medical Care	The objective of this rule is to establish the foster parent's responsibility to ensure the foster child's health needs are met.
R21-6-315. Smoking Restrictions	The objective of this rule is to state the foster parent's responsibility not to expose a foster child to second hand smoke at the foster home or in a vehicle used by the foster parent to transport a foster child.
R21-6-316. Transportation Responsibilities	The objective of this rule is to explain the foster parent's responsibilities related to transporting foster children.
R21-6-317. Education and Development	The objective of this rule is to inform the foster parent of their responsibilities as they pertain to the foster child's education.
R21-6-318. Religion and Cultural Practices	The objective of this rule is to establish that a foster parent is to respect a foster child's religious and cultural practices.
R21-6-319. Recreation	The objective of this rule is to inform a foster parent of their responsibility to address a foster child's recreational needs.
R21-6-320. Out-of-State Travel	The objective of this rule is to inform a foster parent of their notification responsibilities when taking a foster child out-of-state.
R21-6-321. Rights of a Foster Child	The objective of this rule is to outline the foster child's rights.

R21-6-322. Confidential Information	The objective of this rule is to explain to the foster parent what information about the foster child is to be kept confidential. It also explains the foster parent's responsibility to protect and maintain the confidentiality of the foster child's records.
R21-6-323. Information and Records to be Provided to the Foster Parent	The objective of this rule is to detail the information a child placing agency must provide a foster parent upon placement of a dependent child and establish how the foster parent shall not use the information.
R21-6-324. Records Maintained by the Foster Parent	The objective of this rule is to inform foster parents of their responsibilities in maintaining records for foster children.
R21-6-325. Participation in the Service Team	The objective of this rule is to establish that a foster parent is to participate and implement plans developed by the service team.
R21-6-326. Notification Requirements; Unusual Incident	The objective of this rule is to inform foster parents of the procedures and timeframes for reporting incidents to the child placing agency and the licensing agency.
R21-6-327. Notification Requirements; Home or Household Change	The objective of this rule is to explain to the foster parent circumstances or changes that they must report to the licensing agency, when it requires prior authorization, and consequences for failure to report.
R21-6-328. Emergency and Disaster Plan	The objective of this rule is to detail the foster parent's obligation to develop, maintain, and inform a foster child of the emergency and disaster plan.
R21-6-329. Special Provisions for Respite Care	The objective of this rule is to detail requirements for those only providing respite care.
R21-6-330. Special Provisions for an In-Home Respite Foster Parent	The objective of this rule is to detail requirements for those only providing in-home respite care.

R21-6-331. Requirements for Certification to Provide for Specialized Services	The objective of this rule is to inform foster parents of the requirements needed for certification to provide specialized services.
R21-6-332. Placement of a Child with a Developmental Disability in a Foster Home	The objective of this rule is to provide the foster parent information needed when a child with a developmental disability is placed in a foster home.

Article 4. The Licensing Process for Foster Parents

Rule	Objective
R21-6-401. Minimum Qualifications to Apply for a License	The objective of this rule is to establish the minimum requirements for a person to apply for a foster home license.
R21-6-402. Rights of the Applicant and Foster Parent	The objective of this rule is to outline the rights of an applicant or foster parent.
R21-6-403. Application for an Initial License	The objective of this rule is to establish the contents required with an initial application for a foster home license.
R21-6-404. Types of Licenses	The objective of this rule is to provide information on the types of licenses OLR processes and specify the information presented on the foster home license.
R21-6-405. Home Study and Assessment	The objective of this rule is to establish the applicant's or foster parent's requirement to cooperate with assessments.
R21-6-406. The Licensing Decision	The objective of this rule is to describe OLR's process in making a licensing decision.

R21-6-407. Licensing Timeframes	The objective of this rule is to inform of the timeframes for OLR to review and render a licensing decision.
R21-6-408. Licensing Limitations	The objective of this rule is to define and provide clarification regarding the parameters and validity of the foster home license. It also clarifies the criteria OLR will utilize to license a married individual as a single applicant.
R21-6-409. Training Reporting Update	The objective of this rule is to inform the foster parent of their responsibility to complete required training and the consequences if they fail to complete the required training.
R21-6-410. Amending the License	The objective of this rule is to provide the process and information required for amending a foster home license.
R21-6-411. Addition of Household Members	The objective of this rule is to inform the foster parent of their responsibility to report any changes in household composition.
R21-6-412. Application for a Renewal License	The objective of this rule is to inform the foster parent of the licensing renewal process.
R21-6-413. Application for License Reinstatement	The objective of this rule is to provide information on the reinstatement process when a person wishes to reinstate their foster home license.
R21-6-414. Licensing Actions	The objective of this rule is to outline the actions OLR may take regarding a foster home license application or a foster home license.
R21-6-415. Routine Monitoring and Verification of Ongoing Compliance	The objective of this rule is to establish the foster parent's responsibility to cooperate with OLR's monitoring and maintain compliance with licensing requirements.
R21-6-416. Corrective Action Plan	The objective of this rule is to describe the corrective action plan process.
R21-6-417. The Appeal Process	The objective of this rule is to notify the applicant or foster parent of their appeal rights and process of appealing an adverse licensing action taken by OLR.

R21-6-418. Allegations of Abuse or Neglect; Licensing Complaints	The objective of this rule is to inform foster parents of their responsibility to report allegations of abuse or neglect, their responsibility to cooperate with OLR, and OLR possible actions.
R21-6-419. Waiver of Non-Safety Licensing Requirements for Kinship Care	The objective of this rule is to provide information on the waiver process and information concerning kinship families that do not meet all the licensing standards. It also clarifies that health and safety related requirements will not be waived.

3. **Are the rules effective in achieving their objectives?** **Yes ✓ No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes ✓ No ___**

5. **Are the rules enforced as written?** **Yes ✓ No ___**

6. **Are the rules clear, concise, and understandable?** **Yes ___ No ✓**

Rule	Explanation
R21-6-308	The heading of this Section is "Positive Discipline"; however, rules in this Section are addressing discipline and behavior management.
R21-6-410 B. 7.	#7 incorrectly says the foster parent shall work with the licensing agency to modify a license when an adopted child is born. ("Addition of a household member; including the birth of an adopted child;") This should be corrected to say " … the birth of a child or adoption of a child."

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 DCS Office of Licensing and Regulation (OLR) oversees the licensing and regulation of foster homes and the foster home licensing agencies. Foster home licensing agencies are private organizations generally contracted with the Department to oversee the licensing of foster care providers. The Foster Home Licensing Unit within OLR is responsible for the following functions:

- Providing support and technical assistance to foster home licensing agencies, foster parents, and foster home license applicants as needed or requested.
- Completing reviews of application packets received within timeframes set in Chapter 6 and Arizona statute. Types of application packets include initial, renewal, and amendment applications for family foster home licensing or in-home respite licensing.
- Ensuring application packets comply with the rules in Chapter 6 and Arizona statute. Requesting additional information as necessary.
- Completing a Substantive Review of the application and application packet within timeframes set in Chapter 6 and Arizona statute. A substantive review consists of a review of the information provided and determination whether to issue an initial, renewal, or amended foster home license (as applicable) for applications for family foster home licensing or in-home respite licensing.
- Processing concerns related to foster parents or in-home respite foster parents. Process includes review and assessment of the concern or complaint received, determine if a licensing violation occurred, OLR's response to the concern received, and monitor any actions required of the foster parent, in-home respite foster parent, or the licensing agency to address any licensing violations.
- Providing oversight. This includes conducting quarterly visits to the licensing agencies to provide support and monitoring.
- Conducting background checks in the DCS database and processing background checks related to the Adam Walsh Act for all applicants and other adults living in the foster home or an in-home respite provider.
- Reviewing requests to increase the number of foster children a foster parent could provide care to beyond the licensing parameters, also known as overcapacity requests. OLR provides this support in order to preserve sibling connections to children placed in out-of-home care by placing siblings together in a licensed foster home or in order to place children with a foster family with whom they have a prior relationship.
- Maintaining the electronic database established for housing all foster home licensing applications, in-home respite licensing applications, and related information.

Population affected

The cost bearers and beneficiaries of the rules in this Chapter are:

- businesses that contract with DCS;
- businesses contracting with other entities to provide aid in the placement of children that cannot remain in their natural home;
- general public who may wish to apply for a foster home license;
- children in out-of-home care;
- parents of children in out-of-home care; and

- DCS.

The cost bearers and beneficiaries benefit from these rules as the rules provide foster home licensing agencies, applicants, foster parents, and in-home respite providers information about what is expected of them and the licensing process. Foster home licensing agencies are not charged a fee for contracting with DCS. Foster home applicants are not charged a fee for applying, renewing or amending their license.

The Department has contracted 28 Foster Home Licensing Agencies. On June 30, 2024, there were 1,819 licensed foster homes. Foster care providers are expected to comply with the articles in this Chapter as well as the rules in Chapter 8 of this Title. As mentioned, the Foster Home Licensing Unit, processes foster home licensing applications. For Fiscal Year 2024, the Foster Home Licensing Unit received 3,080 licensing applications. Of those 3,080 licensing applications, 516 were initial applications, 777 were renewals, and 1787 were amendments.

Employees

The Foster Home Licensing Unit, a specialized unit within the Office of Licensing and Regulation, enforces and monitors the rules in Chapter 6. The Foster Home Licensing Unit consists of 11 FTE. This unit is comprised of one manager, one supervisor, three team leads, and seven foster home licensing liaisons.

Funding

Expenses related to completing licenses from the DCS provider network are budgeted within the Foster Home Recruitment, Study and Supervision legislative line item: $32,756,000. The Foster Home Recruitment, Study and Supervision legislative line item is the same amount in FY 2024 as it was in FY 2019. Funding sources are both state General Fund and Federal funds.

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?

The Department did not indicate a course of action in the previous five-year-review report.

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 believes that current rules pose the minimum cost and burden on business, the regulated public, and on the general public. Any costs related to the implementation of these rules are associated with monitoring licensees and ensuring that they are abiding by these rules as described in the economic, small business, and consumer impact statement. Additionally, foster home license applicants are not charged a fee to operate a

licensed foster home. In fact, those who are granted a license are reimbursed for the services they provide via federal and state funds. It is the Department's belief that any cost associated with the rule are offset by the greater benefit of ensuring the safety and protection of Arizona children.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No ___✓

Corresponding federal laws are: 42 U.S.C. 622, 45 U.S.C. 623, 45 U.S.C. 671, 45 U.S.C. 672, 45 U.S.C. 675, U.S.C. 5113, and 45 CFR 1356.30. The rules are not 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:

Foster home licenses are exempt from A.R.S. § 41-1037 and do not require a general permit. A.R.S. § 41-1037(A)(5) allows for an exemption when the license is issued pursuant to A.R.S § 8-503. A.R.S. § 8-503(A)(4)(b) allows the Department to establish rules, regulations and standards for licensing of foster homes.

14. Proposed course of action

The Department of Child Safety has reviewed the current rules and proposes to update R21-6-308 to correct the title of this section to "Discipline and Behavior Management". The Department also proposes to update R21-6-410(B)(7) to clarify that the foster parent shall work with the licensing agency to request an amendment to modify a license when there is an addition of a household member; including the birth of a child or adoption of a child. The Department proposes to submit a Notice of Final Rulemaking to the Council by August 2025. The Department believes this timeframe is appropriate as it will allow the Department to complete other outstanding Rulemaking activities simultaneously.

TITLE 21. CHILD SAFETY

CHAPTER 6. DEPARTMENT OF CHILD SAFETY – FOSTER HOME LICENSING

Authority: A.R.S. § 8-453(A)(5)

Editor's Note: Chapter 6 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R21-6-101, made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

Section

ARTICLE 2. LICENSING AGENCY REQUIREMENTS FOR FOSTER HOME LICENSING AGENCIES

Article 2, consisting of Sections R21-6-201 through R21-6-222, made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

Section

ARTICLE 3. LICENSING REQUIREMENTS FOR FOSTER PARENTS

Article 3, consisting of Sections R21-6-301 through R21-6-332, made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

Section

ARTICLE 4. THE LICENSING PROCESS FOR FOSTER PARENTS

Article 4, consisting of Sections R21-6-401 through R21-6-419, made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

Section

ARTICLE 1. DEFINITIONS

R21-6-101. Definitions

The definitions contained in A.R.S. § 8-501 and the following definitions apply when used in this Chapter.

1. "Adult" means any person 18 years of age or older.
2. "Adverse licensing action" means a decision by OLR to deny, suspend, or revoke a license.
3. "Appeal" means the legal right of an applicant to contest an adverse licensing action.
4. "Applicant" means an individual or married couple, unless excepted under R21-6-408, who submit an application for a license as a foster home.
5. "Application" means the documentation and information required by the OLR to evaluate an applicant for a license and includes the application form completed via the Department's electronic database to initiate the licensing process. The application authorizes the licensing agency and the OLR to conduct assessments and investigations to verify qualifications and compliance with licensing requirements.
6. "Careful and sensible judgment" means the use of decisions and actions that maintain the health, safety, and well-being of a foster child.
7. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
8. "Child" means any person less than 18 years of age.
9. "Child developmental home" means the same as A.R.S. § 36-551(11). The DES Division of Developmental Disabilities (DDD) licenses these types of residences to care for a child with a developmental disability in a family setting.
10. "Child Placing Agency" means the same as A.R.S. § 8-501(A)(1)(iii):
    (iii) Any agency maintained by this state, a political subdivision of this state or a person, firm, corporation, association or organization to place children or unmarried mothers in a foster home.
11. "Child Safety Worker" means the same as A.R.S. § 8-801.
12. "Corrective action" means a plan specified by the OLR for a foster parent to remedy the violation of a licensing requirement within a specified time-frame.
13. "Criminal record self-disclosure" means a person's statement made under penalty of perjury, using the form approved by the OLR, attesting to whether the person:
    a. Has a record of any arrests, convictions, or pending indictments;
    b. Has committed a crime specified in the Arizona Revised Statutes as a precluding crime for the issuance of a fingerprint clearance card meeting Level One requirements; or
    c. Is a registered sex offender.
14. "DCS Report" means the same as "report for investigation" in A.R.S. § 8-201(30).
15. "Department" or "DCS" means the Arizona Department of Child Safety
16. "DES" means the Arizona Department of Economic Security.
17. "Developmentally appropriate" means:
    a. The activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical and behavioral capacities that are typical for an age or age group; and
    b. In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.
18. "Developmental Disability" means the same as in A.R.S. § 36-551.
19. "Fingerprint clearance card" means the card issued by the Arizona Department of Public Safety (A.R.S. §§ 41-1758 et. seq.) certifying that the person named on the card does not have a state or federal criminal history record containing an offense specified as a precluding crime in A.R.S. Title 41, Chapter 12.
20. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will expel, is deigned to expel, or may be readily converted to expel a projectile by the action of an explosive.
21. "Fitness" means the ability of an applicant or foster parent to:
    a. Provide a safe and nurturing environment for a foster child; and
    b. Comply with the foster home licensing requirements.
22. "Foster care" means care and supervision provided to a child who is in the custody of the state.
23. "Foster child" means a person less than 18 years of age who is receiving foster care. "Foster child" is further defined under A.R.S. § 8-501(4). For the purpose of this Chapter, "foster child":
    a. Includes a young adult less than 21 years of age who continues to reside in a foster home under a written individual case plan agreement for out-of-home care, or under the Independent Living Program defined in A.R.S. § 8-521;
    b. Includes a child with a Developmental Disability placed by the Department in a child developmental home;
    c. Does not include a young adult who has returned to a foster home under the Transitional Independent Living Program defined in A.R.S. § 8-521.01; and
    d. Does not include the birth or adopted child, of an applicant, foster parent, or other household member.
24. "Foster home" means a residence where a foster parent lives and includes a detached home, all structures, and the entire premises belonging to the home, including apartments, guest homes, garages, sheds, and motorhomes. "Foster home" is further defined under A.R.S. § 8-501.
25. "Foster parent" means an individual, or married couple, who provides foster care with a license from the OLR. "Foster parent" is further defined under A.R.S. § 8-501.
26. "Group foster home" means a class of foster home in which the licensed foster parent is certified to provide care to more than five but not more than 10 foster children at a time. "Group foster home" is further defined under A.R.S. § 8-501.
27. "Guardian" means a person who is authorized by law to have the care and custody of a child.
28. "Hazard" means a condition or situation that may cause or result in physical injury or illness to a child.

29. "Health self-disclosure" means an adult household member's declaration, using the form approved by OLR attesting to the person's physical, medical, and emotional health. The health-self disclosure:
    a. Identifies any past or present:
        i. Major illness;
        ii. Communicable disease;
        iii. Surgery;
        iv. Drug or substance abuse problem or treatment; and
        v. Other medical, physical, or mental health condition or treatment; and
    b. Identifies all medications, treatments, adaptive equipment, or other accommodations used to reduce or eliminate any medical, physical, or mental health conditions.
30. "Home" means the residence where a foster parent lives. "Home" may be used interchangeably with "foster home."
31. "Home and Community Based Services" or "HCBS" means the same as in R6-6-1501. The DES Division of Developmental Disabilities (DDD), Office of Licensing, Certification, and Regulation (OLCR) rules on HCBS are in 6 A.A.C., Chapter 6, Article 15.
32. "Household" means all children and adults living in a foster parent's home.
33. "Household member" means any individual who lives or intends to live in the foster home or on the premises, for 30 consecutive days or more, or periodically throughout the year for a total of 30 non-consecutive days or more. "Household member":
    a. Includes the applicant, licensee, housemates, tenants; children of the applicant, licensee, housemates, or tenants; and adults participating in the Transitional Independent Living Program defined in A.R.S. § 8-521.01; and
    b. Does not include a foster child, an adult with a Developmental Disability, or young adult who resides in a foster home under a written agreement with the Department for continued care or under the Independent Living Program defined in A.R.S. § 8-521.
34. "Individual Family Service Plan" or "IFSP" means a written statement of services and supports to be provided to a child and the child's family for children less than the age of three years who are eligible for the Arizona Early Intervention Program (AzEIP) to enhance the capacity of families and care givers to support the child's development and engagement and participation in everyday routines and activities.
35. "In-home respite foster parent" means an individual licensed to provide respite care in a licensed foster home, which is not that individual's own home.
36. "Kinship care" means that the care and supervision of a foster child in a foster home is provided by a relative or an individual who has a significant relationship with the child.
37. "Lawfully present" means that an individual is a United States citizen or national or an alien authorized by an appropriate federal entity or court to be present in the United States.
38. "License" means the permission granted by OLR, to legally operate a foster home and includes an initial, renewal, and amended license.
39. "Licensee" means the individual or married couple who is approved by OLR to be licensed as a foster parent.
40. "Licensing agency" means an entity, which may include a licensed Placing Agency the Department contracts with to recruit and train foster parents and monitor a licensed foster home.
41. "Licensing decision" means the issuance, denial, suspension, revocation of, or amendment to a license by OLR in response to the receipt and review of:
    a. An application for initial or renewal licensure,
    b. An application to amend a license, or
    c. A complaint or investigation conducted according to R21-6-418.
42. "Licensing record" means the information maintained by a licensing agency or by the OLR, for the purpose of documenting the fitness of and compliance with licensing requirements, laws, and rules of an applicant or foster parent.
43. "Licensing requirements" means the rules specified in this Chapter and Chapter 8 of this Title.
44. "Life Safety Inspection" means an examination of a family foster home by OLR to verify compliance with standards intended to safeguard a foster child from fire and other hazardous conditions.
45. "Lock" means a device operated by a key, combination, magnet, keycard, or other tool to safeguard medications, swimming pools, weapons, and highly toxic substances.
46. "Medically complex foster home" means a class of foster home in which the licensed foster parent is certified to provide care to a foster child identified by the Department as requiring special care for medically complex needs.
47. "Medical professional" means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medicine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.
48. "Medication" means both prescription and over-the-counter remedies.
49. "Mobile home" means a trailer that is mounted on wheels or a platform with utility connections exposed under the trailer.
50. "Need to know" means the legitimate requirement of a person or organization to know, access, or possess confidential or personally identifiable information that is critical to carry out official duties or to provide services to the child.
51. "OCWI Investigator" means a DCS Investigator who is assigned to the Office of Child Welfare Investigations, and whose primary duties and responsibilities are prescribed in A.R.S. § 8-471.
52. "Office of Licensing and Regulation" or "OLR", means the administration within DCS that is responsible for reviewing and evaluating applications for licensure; supervising and monitoring licensees; and completing all official licensing actions, including issuing, denying, amending, suspending, and revoking a license.
53. "Physical punishment" means the deliberate infliction of pain or discomfort to a person.
54. "Physical restraint" means the same as A.R.S. § 8-501(A)(14)(b)(iii).
55. "Physician's Statement" means information on the physical, emotional, and mental health of any adult household member, providing care for a foster child, using a form approved by OLR. The statement shall:
    a. Be based on an examination by a medical professional,

b. State whether the household member has a condition that could interfere with the provision of safe care and supervision to a foster child, and
c. Include a completed health self-disclosure by the household member.

56. "Placement" means the act of finding an appropriate foster home for a foster child and putting the foster child in that foster home.
57. "Placement agreement" means a written arrangement between a licensee and a Child Placing Agency as specified under R21-6-323.
58. "Placement packet" means documents containing key information needed for a foster parent to understand the needs of the foster child, including medical records and school records.
59. "Pool" means any natural or man-made body of water located at a foster home or on its premises that:
    a. Could be used for swimming, recreational, therapeutic, or decorative purposes;
    b. Is greater than 18 inches in depth; and
    c. Includes swimming pools, spas, hot tubs, fountains, and fishponds.
60. "Positive discipline" means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to generally accepted levels of social behavior.
61. "Premises" means:
    a. The home; and
    b. The property surrounding the home that is owned, leased, or controlled by the applicant or licensee.
62. "Protective services registries" means the Central Registry and the Adult Protective Services Registry.
63. "Public school" means a school, including a charter school, that is maintained at public expense for the education of the children of a community or district and that constitutes a part of a system of free public education commonly including primary and secondary education.
64. "Reasonable and prudent parenting standard" means the practice of making careful and sensible parental decisions that maintain the health, safety, and best interests of a foster child while at the same time encouraging the emotional and developmental growth of the child when determining whether to allow the child to participate in extracurricular, enrichment, cultural, and social activities.
65. "Receiving foster home" means a class of foster home in which the licensed foster parent is certified to receive a foster child with limited notice and for a limited period of time.
66. "Relative" means an individual who is related by blood, marriage, or adoption to the foster child. For American Indian and Alaska Native children, "relative" could also include a tribally defined extended family relationship.
67. "Respite care" means the provision of temporary care and supervision of a foster child to relieve a foster parent from the duty to care for the foster child for a limited period of time.
68. "Safeguard" means to take reasonable measures to eliminate the risk of harm to a foster child. Where a specific method is not otherwise prescribed in this Chapter, safeguarding may include:
    a. Locking up a particular substance or item;
    b. Putting a substance or item out of reach of a foster child;
    c. Erecting a barrier that prevents a foster child from reaching a particular place, item, or substance;
    d. Using protective safety devices; or
    e. Providing supervision.
69. "Service Team" means a group of persons brought together to ensure the best care for a foster child and at a minimum, includes a child age 14 years and older, staff from the Department, and the licensing agency.
70. "Sibling" means brothers and sisters by birth or adoption, stepbrothers, stepsisters, half-brothers, and half-sisters.
71. "Skirting" means the barrier around the base of a mobile home that is intended to protect utility connections from damage or unauthorized contact.
72. "Slip-resistant surface" means flooring that provides friction to help prevent falls when the surface is wet. A slip-resistant surface may be achieved by rippling or corrugating the surface, applying textured strips, installing a secured carpet, using rubber mats, and other similar measures.
73. "Smoking" means burning or vaporizing tobacco products or other substances in a cigarette, cigar, pipe, electronic cigarette, or by means of equipment to inhale and exhale the smoke or vapor.
74. "Specialized service" means a higher level of skill, training, and experience required for certification as a Group, Medically Complex, Therapeutic, or Receiving foster home.
75. "Stability" means having the necessary resources, surroundings, temperament, and demeanor to maintain a safe, steady, and consistent home environment for a foster child.
76. "Statement of Understanding" means a signed document completed by an applicant or foster parent confirming the person has read, understands, and agrees to comply with all applicable laws, rules, and regulations relating to the operation of a foster home.
77. "Substantial compliance with licensing requirements" means that the nature and number of violations of licensing requirements are not significant and:
    a. Do not pose a risk to the life, health, safety, or welfare of a child receiving care;
    b. Do not constitute a pattern of noncompliance or a failure to implement required corrective action; and
    c. Are not the result of misrepresentation, falsification, or fraud by the applicant or foster parent.
78. "Therapeutic foster home" means a class of foster home in which the care is provided by a foster parent who has received specialized training to provide care and services within a support system of clinical and consultative services to children with behavioral health needs.
79. "Trigger locked" means a method to render a firearm temporarily or permanently inoperable by blocking the firing or discharge mechanism for the firearm with a locked device.
80. "Weapon" means a firearm, bow and arrows, or other device or instrument, which in the manner it is used or intended to be used is capable of inflicting serious bodily injury, or causing death.
81. "UL approved" means a safety certification mark of a Nationally Recognized Testing Laboratory (NRTL), such as UL (Underwriters Laboratories) or ETL (Electro Technical Laboratory) on an electronic device.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

ARTICLE 2. LICENSING AGENCY REQUIREMENTS FOR FOSTER HOME LICENSING AGENCIES

R21-6-201. Minimum Qualifications for an Applicant

The licensing agency shall ensure the right of any individual or married couple to apply for a foster home license, regardless of gender, race, religion, political affiliation, national origin, disability, or sexual orientation, if the applicant meets the minimum qualifications specified under Chapter 6 of this Title.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-202. Professional Judgment

The licensing agency shall use professional judgment in all recommendations made and inquiries conducted in the course of licensure. "Professional judgment" means an objective and thorough analysis based on:

1. Commonly accepted industry standards and practices for the regulation of care for children;
2. Knowledge and experience in accordance with contractual requirements;
3. Interviews, assessments, observations, references, and documented sources of verifiable information; and
4. Knowledge of laws, rules, and guidelines for providing foster care.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-203. Conflicts of Interest

A. The licensing agency shall adopt a written code of ethics regarding conflicts of interest.

B. The licensing agency shall assign the following duties for any conflicts of interest other than those listed in subsection (C) to an impartial party, such as a neutral employee or another licensing agency.

1. The home study and assessment responsibilities as described under R21-6-206; and
2. Licensing complaints as described under R21-6-221.

C. The licensing agency shall not accept as an applicant a person who is:

1. An employee of the licensing agency, a service provider, a contractor, or a major donor; or
2. Related by blood or marriage to an employee of the licensing agency. For the purpose of this subsection, relatives include the biological, adoptive, or step:
   a. Child,
   b. Grandchild,
   c. Parent,
   d. Parent of spouse,
   e. Grandparent,
   f. Grandparent of spouse,
   g. Sibling,
   h. Sibling of spouse,
   i. Aunt, or
   j. Uncle.

D. A licensing agency that has a conflict of interest at the time this Article is published in the *Arizona Administrative Register* shall have 90 days to transfer cases to an alternative licensing agency that does not have a conflict of interest under subsection (C).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-204. Rights of the Applicant and Foster Parent

A. In addition to the inspection and due process rights specified under A.R.S. § 41-1009, the licensing agency shall ensure that each applicant and foster parent is informed of and afforded the rights specified under this Section. OLR may request that the licensing agency submit the notice used by the licensing agency to OLR.

B. The licensing agency shall ensure that a foster parent or applicant is permitted to access their licensing record as follows:

1. Upon written request, a foster parent or applicant shall have the right to access their complete licensing record, except as provided in subsection (C); and
2. A foster parent or applicant shall have the right to provide a written response to findings and comments in the home study, investigative reports, and any correspondence, with the exception of the items listed in subsection (C).

C. The licensing agency shall not release the following information to a foster parent or applicant:

1. Information supplied by confidential references during the licensing process;
2. Information protected from secondary dissemination under state or federal law, including investigations and DCS Reports of alleged child abuse or neglect; and
3. The names of persons and organizations identified as sources in a licensing complaint or DCS investigation or DCS Report of alleged child abuse or neglect.

D. A licensing agency shall make a diligent effort to work with an applicant or foster parent. If however, the parties determine they cannot continue to work together, the licensing agency shall assist the foster parent or applicant to find another licensing agency and transfer their licensing record to the new agency under R21-6-215(C).

1. If it is the licensing agency that determines that it cannot work with a foster parent or applicant, the licensing agency shall notify the foster parent or applicant in writing specifically listing the reasons the licensing agency cannot work with the foster parent or applicant and assist the foster parent or applicant to find another licensing agency and transfer their licensing record to the new agency under this subsection (D); or
2. If the foster parent or applicant does not meet the minimum qualifications for licensure under R21-6-401, the licensing agency shall notify the foster parent or applicant in writing specifically listing the reasons, the applicant or foster parent fail to meet the minimum qualifications.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-205. Licensing Agency Responsibility; Application for an Initial Foster Home License

A. When an applicant meets the minimum qualifications specified under R21-6-401, the licensing agency shall provide the assistance needed to submit the application for initial licensure via the Department's electronic database.

B. The licensing agency shall ensure that the application for an initial license contains, at minimum, information specified under R21-6-403.

C. The licensing agency shall provide OLR with signed verification that the applicant has provided proof of income and resources and:

1. Criminal record self-disclosure for each adult household member;
2. Valid Level One fingerprint clearance cards for each adult household member, as necessary; specified in A.R.S. § 8-509;

3. Health self-disclosure completed by each adult household member;
4. Physician's statement for the foster parent, applicant, and any other adult household member who will provide care or supervision to the foster child;
5. Proof or current training in cardiopulmonary resuscitation (CPR) and first aid;
6. Current immunization record available for each child household member. In accordance with A.R.S. § 8-509(I), the lack of updated or available immunization records will not prohibit licensure, but may be grounds for restricting the license to prevent the placement of infants, young children, and medically complex children;
7. Valid Arizona driver's license for each household member who transports a foster child, or a transportation plan in place in the absence of a valid Arizona driver's license.
8. Current registration and insurance card for each vehicle that belongs to a household member and may be used to transport a foster child; and
9. The Statement of Understanding, as defined under R21-6-101(76).

D. The licensing agency shall ensure that the application for an initial license includes the home study and assessment specified under R21-6-206 and the agency signature page.

E. The licensing agency shall submit the information required in this Section to the licensing authority no later than 30 days from receipt of all information required by this Section.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-206. Licensing Agency Foster Home Study and Assessment

A. The licensing agency shall enter the home study via the Department's electronic database.

B. To assess the applicant and write the initial home study, the licensing agency shall:
1. Conduct interviews with each household member, including each child household member, if appropriate to the child's age and developmental level, on at least:
   a. Two occasions in the applicant's home;
   b. One occasion with each applicant, individually; and
   c. One occasion with applicants, jointly, if:
      i. Applicants are married; or
      ii. Another adult household member is applying for a license or is currently licensed;
2. Complete reference checks as follows:
   a. Obtain written statements via postal mail, electronic mail, or on the form supplied by OLR, from at least five reference sources identified by the applicant;
   b. Ensure that no more than two references are from relatives; and
   c. Make personal contact, either in a face-to-face meeting or via telephone, with at least one of the reference sources identified by the applicant;
3. Provide the applicant with the required forms and information to apply for a Level One fingerprint clearance card;
4. Request Central Registry record checks for each adult household member for Arizona and from each state these individuals resided in during the previous five years;
5. Ensure completion of all required training by the applicant;
6. Ensure the applicant has the proper equipment required by this Chapter, such as age-appropriate beds, for each foster child at the time of placement;
7. Visit the applicant's home and provide information to help the applicant prepare for the Life Safety Inspection to be conducted by OLR throughout the home and premises.
8. Request a Life Safety Inspection for the applicant's home and verify any corrections made, if applicable; and
9. Work with each household member to assemble information for self-assessments, using the forms approved by OLR.

C. The home study shall include a summary of self-assessments, interviews, and observations evaluating the applicant's fitness for licensure, including:
1. Motivation and expectations for becoming a foster parent;
2. Commitment to the care and supervision of a foster child;
3. Parenting skills and ability to use a reasonable and prudent parenting standard characterized by a careful and sensible parental decisions that maintain the health, safety, and best interests of a foster child while at the same time encouraging the emotional and developmental growth of the child;
4. Daily routine and time available to devote to the care of a foster child;
5. Support network, including friends, neighbors, relatives, and the community;
6. Personal or family problems and the applicant's success in undergoing rehabilitation and overcoming or coping with these problems, including abuse, neglect, or violence that was:
   a. Committed by the applicant;
   b. Committed against the applicant; or
   c. Witnessed by the applicant;
7. History of substance use or abuse and the applicant's success in overcoming or coping with these challenges;
8. Medical, physical, and mental health problems and the applicant's success in overcoming or coping with these problems;
9. Ability to deal with anger, stress, and separation;
10. Personal stability, marital stability, and the stability of the household, as applicable;
11. Stability of residency in Arizona;
12. Significant life events, including but not limited to job separation, divorce, child custody, bankruptcy, or the death of a family member;
13. History of complying with court-ordered child support, if applicable;
14. Attitude toward discipline, discipline of the applicant's children, and willingness to commit to the Department's discipline policy; and
15. Willingness to share parenting for a foster child with that child's birth family.

D. In addition, the home study shall address:
1. Household members' ability to meet requirements, as described under R21-6-302;
2. The ability of household members to provide a safe and positive home environment for a foster child;
3. The strengths and needs of the applicant; and
4. The applicant's compliance with licensing requirements as defined in Chapter 6 of this Title.

E. The home study shall contain a recommendation to issue or deny a license, based on the information available to the licensing agency. A licensing agency shall provide justification for a recommendation to deny a license using specific examples that demonstrate that, in the licensing agency's professional judgment, the applicant does not meet licensing requirements.

F. The licensing agency may, at its discretion, provide additional recommendations in the home study to:
1. Limit the terms or conditions of a license; and
2. Certify the applicant to provide specialized services, as described under R21-6-331.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-207. Request for Additional Information During Licensing Review
Prior to making a licensing decision, OLR may, as necessary and appropriate, require the licensing agency to assist to:
1. Provide additional documentation to verify compliance with licensing requirements, such as marriage licenses, divorce decrees, child support orders/payments, pay stubs, and bankruptcy documents;
2. Provide additional information if:
   a. The medical, physical, or mental health needs of a household member could interfere with the care and supervision of a foster child;
   b. Adults residing outside the household will have frequent or close contact with a foster child; or
   c. A household member has been charged with or convicted of a crime, even if the specific crime does not preclude the issuance of a Level One fingerprint clearance card;
3. Gather additional information needed to determine the applicant's fitness. This may include:
   a. Interviewing the applicant,
   b. Contacting references,
   c. Verifying information provided in the application or by the licensing agency, and
   d. Inspecting the applicant's home.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-208. Statement of Understanding
The licensing agency shall review the Statement of Understanding with the foster parent at initial licensing, when a child is placed in the foster parent's care, and at each license renewal thereafter.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-209. Verification of Equipment at Time of Placement
The licensing agency shall verify that all equipment including age appropriate beds, car seats and restraints required by this Chapter are appropriately installed and in place at the time of placement of a foster child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-210. Approval for Additional Placements from Another Child Placing Agency
The licensing agency shall notify and obtain approval from DCS before a foster parent accepts a child from a Child Placing Agency other than DCS.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-211. Life Safety Inspection
A. The licensing agency shall inform the applicant or foster parent of the Life Safety Inspection rules specified in Chapter 8 of this Title before requesting an inspection by OLR.
B. At least 30 days before an inspection is due, the licensing agency shall request a Life Safety Inspection by OLR. The request shall provide correct information on:
1. The name, address, telephone number, and e-mail of the applicant or foster parent;
2. The major cross streets or directions for locating the home; and
3. Contact information for the licensing agency.

C. The licensing agency shall:
1. Conduct a preliminary inspection of the applicant's or foster parent's home to assess compliance with Life Safety Inspection rules;
2. Conduct an annual inspection, using the format approved by OLR, to reinforce the importance of the Life Safety Inspection requirements and to verify ongoing compliance; and
3. Verify corrections made by the applicant or foster parent in response to violations, as applicable.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-212. Training Reporting Update
A. The licensing agency shall update the Department's electronic database within seven days of the licensee completing the training required by A.R.S. § 8-509.
B. OLR may take an adverse licensing action against the licensee, or the Department may take a contract action against the licensing agency, or both, if the licensing agency does not submit the information as required by this Section.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-213. Application for Renewal License
A. The licensing agency shall assist a foster parent, as needed, in applying for a renewal license via the Department's electronic database.
B. At least 30 days before the expiration of the license, the licensing agency shall submit the completed application for a renewal license via the Department's electronic database.
C. The application for a renewal license shall update the information in the Department's electronic database and the previous home study, including:
1. Training completed by the licensee;
2. Monitoring visits and safety inspections conducted by the licensing agency;
3. Corrective action plans implemented since the previous home study and the status of violations that resulted in the need for corrective action, if applicable;
4. Corrections made by the foster parent in response to violations cited in the Life Safety Inspection conducted by the OLR if applicable;
5. Complaints and investigations, as described under R21-6-221 and R21-6-418, completed since the previous home study or that are pending completion, if applicable;
6. Central Registry record checks requested by the licensing agency for each adult household member;
7. Confirmation of a current, valid Level One fingerprint clearance card for each adult household member;
8. A summary of significant events and changes occurring since the previous home study, including:

a. The foster parent's income, resources, expenses, and debts;
b. The health of a household member;
c. Household composition; and
d. The dynamics of the foster parent's family and support network, including changes in roles, interactions, attitudes, and relationships;

9. The foster parent's compliance with licensing requirements, as defined in Article 3.

D. The updated home study shall contain a recommendation to issue, amend, or deny a license, based on the information available to the licensing agency. A licensing agency shall justify a recommendation to deny a license using specific examples that demonstrate that, in the licensing agency's professional judgment, the applicant does not meet the licensing requirements.

E. The licensing agency may, at its discretion, provide additional recommendations in the home study to limit the terms or conditions of a license, based on the licensing agency's professional judgment.

F. The licensing agency shall provide OLR with:
1. Criminal record self-disclosure for each adult household member;
2. Physician's statement for the foster parent, completed every two years; and
3. The Statement of Understanding, as defined under R21-6-101(76).

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-214. Application for License Reinstatement

A. "Reinstatement" refers to an action by OLR to reactivate a license that has been expired or closed for less than one year.

B. The licensing agency shall submit an application for reinstatement using the same process as an application for renewal licensure. As required for a renewal, the application for reinstatement shall include a new home study.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-215. The Licensing Record

A. The licensing agency shall compile and maintain a licensing record for each applicant or foster parent in accordance with the requirements of OLR.

B. The licensing record shall contain:
1. All documentation or evidence gathered during the licensing process and throughout the term of the license, including:
   a. Documentation gathered to complete the application for licensure and the home study;
   b. Evidence of compliance with licensing requirements specified in this Chapter;
   c. Dates and details for home visits, contacts, and communication with the applicant or foster parent regarding licensing requirements or the licensing process; and
   d. Evidence that inspection and due process rights were explained to the applicant or foster parent in accordance with A.R.S. § 41-1009;
2. The home study completed by the licensing agency, as described under R21-6-206, and submitted to the licensing authority via the Department's electronic database; and
3. Requests for or reports demonstrating the completion of Life Safety Inspections for the applicant's home and premises.

C. Upon written request by the applicant or foster parent, the licensing agency shall forward the complete and original licensing record to another licensing agency for the purpose of facilitating transfer to the receiving licensing agency:
1. Within 30 days of receiving the request, and
2. At no cost to the applicant or licensee.

D. Upon written request and payment of reasonable duplication and postage fees by the applicant or foster parent, the licensing agency shall forward a copy of the licensing record to an agency or organization for the purpose of assisting a foster parent who is being considered for a private or out-of-state adoptive placement, or a similar purpose.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-216. Amending the License

A. The licensing agency shall inquire at each contact with the foster parent if there are any circumstances requiring an amendment to the license.

B. The licensing agency shall request an amendment to modify a license via the Department's electronic database, as specified under R21-6-410.

C. The licensing agency shall provide the following information to the licensing authority to amend a license:
1. A description of the requested change or changes;
2. Justification for the change or changes, as appropriate;
3. A recommendation by the licensing agency based on the licensing record to issue or deny an amendment to the license; and
4. A recommendation by the licensing agency based on the licensing record to limit the terms or conditions of the license, if applicable.

D. To change the physical address due to the relocation of the licensee, the licensing agency shall:
1. Conduct a preliminary Life Safety Inspection using the form provided by OLR within seven days of the relocation of the licensee; and
2. Within seven days of the preliminary inspection, submit a request to OLR for a Life Safety Inspection.

E. To add the name of a spouse due to marriage, the licensing agency shall conduct interviews and assessments to evaluate the spouse's fitness in accordance with licensing requirements. A new spouse shall meet all foster parent licensing requirements in this Chapter, including obtaining a Level One fingerprint clearance card, passing a protective service registries check, and all required pre-service training as prescribed in R21-6-303.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-217. Evaluating Changes in Household Composition

A. If there is a change in the household composition, the licensing agency shall evaluate the impact of the change on the dynamics within the home and on the provision of care or supervision to a foster child.

B. When a household member is added during the term of the license, the licensing agency shall:
1. Obtain from each new adult household member:
   a. Information and consents needed to conduct background checks with the Central Registry in Arizona and, if applicable, with the registries in other states

the household member has lived in during the previous five years;
b. A criminal record self-disclosure;
c. Verification that the household member possesses a valid fingerprint clearance card that meets Level One requirements;
d. A completed health self-disclosure; and
e. A Physician's Statement if providing care for a foster child;
2. Request a current immunization record for a new child household member;
3. Conduct interviews, gather required documents, and make observations to evaluate the new household member, including:
a. The length of time the foster parent has known the new household member;
b. The background of the new household member, including any criminal history and allegations of child abuse or neglect;
c. Financial arrangements, if any, between the foster parent and the new household member;
d. The role of the new household member in the care and supervision of a foster child:
e. Changes in sleeping arrangements;
f. Whether the new household member presents a risk to the health, safety, or well-being of a foster child; and
g. Whether licensing requirements continue to be met with the addition of the new household member;
4. Enter information required by this rule via the Department's electronic database within 15 calendar days of receiving notification from a foster parent regarding a new household member;
5. Use professional judgment in making a recommendation to OLR on the need for an adverse licensing action in response to the new household member;
6. The licensing agency shall inform the foster parent that a household member's failure to meet requirements specified in Chapter 6, may constitute grounds for an adverse licensing action.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-218. Routine Monitoring and Verification of Ongoing Compliance

A. At least once every three months, the licensing agency shall conduct assessments, monitoring, on-site visits, and make copies of required documents, as needed, to verify information and maintain a record of ongoing compliance by the foster parent. Inspection and monitoring activities of the licensing agency shall include, as applicable:
1. A review of records and reports maintained by the foster parent on the care, services, and treatment provided to the foster child;
2. Interviews with household members;
3. Interviews with foster children; and
4. An inspection of the home, premises, and vehicles used to transport foster children.

B. At least one monitoring visit per year shall be unannounced.

C. At the time of each monitoring or inspection, the licensing agency shall provide the applicant or foster parent with:
1. A written summary of the monitoring or inspection;
2. Planned follow-up and required corrective actions, as applicable; and
3. A written summary of the applicant's or foster parent's rights, in accordance with A.R.S. § 41-1009.

D. The licensing agency shall keep a copy of the written summaries specified in subsection (C) and make the summaries available to OLR upon request.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-219. Corrective Action Plans

A. The licensing agency shall cooperate with OLR and monitor compliance with a corrective action plan to remedy the violation of a licensing requirement.

B. The corrective action plan shall:
1. Be written by OLR in consultation with the licensing agency,
2. Specify the rule violated by the licensee,
3. Specify the steps a foster parent must take to remedy a violation, and
4. Specify a date for completion of the required corrective action.

C. The licensing agency or OLR may, based on their professional judgment, conduct unannounced monitoring visits to verify the implementation or completion of corrective action.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-220. Notification Requirements; Unusual Incident

A. The licensing agency shall notify OLR and the Child Placing Agency of any issues arising under R21-6-326.

B. Within 48 hours of the occurrence of an incident specified in R21-6-326, the licensing agency shall provide in writing to OLR and the Child Placing Agency:
1. A description of the incident, including the place, date, and time of occurrence;
2. The names and contact information for any persons involved in the incident;
3. The measures taken by the foster parent to address, correct, or resolve the incident; and
4. The action taken by the licensing agency in response to the incident, if applicable.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-221. Allegations of Child Abuse or Neglect; Licensing Complaints

A. The licensing agency shall notify OLR in writing of each licensing complaint and each investigation initiated by the Department or law enforcement within 24 hours of the licensing agency becoming aware of the complaint or investigation, unless original notification came from OLR. This notification shall include the:
1. Date and place of the incident;
2. Nature of the complaint or allegation; and
3. Names of all persons involved in the allegation.

B. The licensing agency shall conduct an inquiry into each licensing complaint or concern. Within 45 days of being notified of a licensing complaint or concern, the licensing agency shall submit a written report of the licensing inquiry to OLR and to the licensee, in accordance with due process rights and subject to R21-6-418, unless OLR grants an extension in writing. The report of the licensing inquiry shall include:
1. The scope of the inquiry, including a list of persons interviewed and a list of the documentation reviewed;

2. The validity of allegations and other findings related to licensing violations; and
3. Recommendations by the licensing agency regarding follow-up action.

C. The licensing agency shall not interfere with, and shall assist, as requested, law enforcement or the Department's Child Safety Workers, and OCWI Investigators in conducting investigations of child abuse or neglect.

D. OLR may, if necessary and appropriate, conduct an inquiry or investigation independent of or in conjunction with the licensing agency, law enforcement, or the Department's Child Safety Workers or OCWI Investigators.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-222. Waiver of Non-Safety Licensing Requirements for Kinship Care

A. When submitting an application for an initial, renewal, or amended license, the licensing agency may recommend the waiver of a non-safety licensing requirement for an applicant or foster parent who will be providing only kinship care, as defined under R21-6-101(36) if compliance with the non-safety requirement would be a hardship on the applicant or foster parent. The recommendation for a waiver shall include:
1. The specific rule to be considered for waiver by the OLR;
2. The reason compliance would be a hardship;
3. Any proposed alternative compliance with the rule requirement, including pictures or diagrams that depict any physical requirement to be waived; and
4. Justification that waiving the licensing requirement will not compromise the safety of a foster child.

B. The licensing agency shall submit the waiver request only on forms supplied by OLR.

C. OLR shall consider the waiver of a non-safety licensing requirement on a case-by-case basis.

D. An applicant or foster parent shall base a waiver request on a licensing requirement and the needs of the foster child. OLR shall not grant a waiver request because it would be inconvenient for the foster parent or applicant to comply with a licensing requirement.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

ARTICLE 3. LICENSING REQUIREMENTS FOR FOSTER PARENTS

R21-6-301. General Requirements for Foster Parents

A. A foster parent shall:
1. Be 21 years of age or older;
2. Reside in Arizona and be lawfully present in the United States;
   a. Each applicant shall present one of the documents specified under A.R.S. § 41-1080(A) and, as applicable, (E), to the licensing agency to demonstrate that the applicant is lawfully present in the United States; and
   b. If an alien applicant has only temporary authorization to be present in the United States, the applicant shall provide documentation indicating that the authorization is valid for a minimum of one year or that the applicant has already taken steps to obtain authorization to remain for at least one year.
3. Live in a home in which all adult household members pass a background check based on:
   a. A Central Registry check in Arizona and in the registries in other states the applicant has lived in during the previous five years,
   b. A completed and notarized criminal record self-disclosure, and
   c. A valid Level One fingerprint clearance card from the Arizona Department of Public Safety (DPS).
4. Be of reputable and honest character. A licensing agency shall verify compliance by evaluating information provided by the applicant and information obtained through background checks, references, interviews, and records of the Department;
5. Live in a home in which all household members are free of medical, physical, or mental health conditions that would interfere with the safe care and supervision for a foster child.
   a. The applicant shall demonstrate compliance by providing his or her licensing agency with:
      i. A health self-disclosure completed by all adult household members before initial licensure, and at each renewal thereafter;
      ii. A physician's statement for the applicant completed no more than 12 months before the license application is submitted via the Department's electronic database and at least every two years thereafter; and
      iii. A physician's statement for each household member who will be providing care and supervision for a foster child. The physician shall complete the statement no more than 12 months before the license application is submitted via the Department's electronic database and every two years thereafter in accordance with R21-6-302.
   b. If a health self-disclosure or physician's statement for a household member identifies a history of medical, physical, or mental health conditions, the applicant shall have the opportunity to explain treatments, adaptive equipment, or other accommodations used to reduce or eliminate any risk associated with the condition that could interfere with the applicant's ability to provide safe care and supervision for a foster child;
6. Demonstrate careful and sensible judgment, exercise a reasonable and prudent parenting standard under R21-6-307, and have the stability, maturity, nurturing skills, knowledge, and ability to provide safe care to a foster child. The licensing agency and OLR shall consider relevant factors in this assessment, including:
   a. Length of time the applicant has lived in the current residence, and recent patterns involving relocation;
   b. Length of time household members have lived together and their ability to accommodate each other;
   c. Applicant's ability to cope effectively with change, stress, and anger;
   d. Applicant's experience providing care and supervision for children or vulnerable adults;
   e. Applicant's knowledge of or experience with human and child development;
   f. Applicant's method of discipline with the applicant's own children and the applicant's willingness to use positive discipline; and
   g. Applicant's willingness and ability to comply with licensing requirements;

7. Have income or resources to afford current expenses without regard to future reimbursement. The calculation of current expenses does not include the expense of caring for a foster child already living with the applicant.
   a. The applicant shall demonstrate compliance by completing the financial information on the application for licensure and by providing the licensing agency with bank statements, pay stubs, income tax forms, and other financial records that demonstrate income and resources that meet or exceed expenses.
   b. The licensing agency and OLR shall consider resources including:
      i. A reliable source of financial assistance or payment, including social security, Nutrition Assistance (formerly known as food stamps), Cash Assistance, adoption subsidy, and Women, Infants and Children; and
      ii. Reimbursement for medically complex and therapeutic homes, as certified under R21-6-331;
8. Have the support and agreement of all adult household members on the decision to be a foster parent;
9. Provide a safe home with sufficient space and privacy for a foster child, as described under R21-6-311 and R21-6-313;
10. Work cooperatively with a licensing agency and OLR; and
11. Comply with all licensing requirements specified in this Chapter.

B. OLR shall determine whether an applicant meets the licensing requirements for a foster parent based on information provided by the applicant and the licensing agency, including the application, home study, prior licensing history, and the professional judgment of the licensing agency.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-302. Requirements for Household Members

A. The applicant shall ensure that each adult household member participates in interviews necessary to evaluate the:
1. Role of the household member in the care and supervision of a foster child, and
2. Household member's support of and agreement with the applicant's decision to be licensed.

B. The applicant shall ensure that each adult household member provides the licensing agency with:
1. Information and consents needed to conduct background checks with the protective service registries in Arizona, and, if applicable, with the registries in other states the household member has lived in during the previous five years;
2. A completed health self-disclosure;
3. A physician's statement under R21-6-301(A)(5)(iii) if the household member will be providing care and supervision for a foster child;
4. A criminal record self-disclosure; and
5. Verification that the household member has a valid Level One fingerprint clearance card.

C. The applicant shall provide available immunization records that have been updated, as necessary, for each child household member. In accordance with A.R.S. § 8-509(I), the lack of updated or available immunization records shall not prohibit licensure, but may be grounds for restricting the license to prevent the placement of infants, young children, and medically complex individuals.

D. If a person, other than a foster child, moves into the household during the term of the license, the licensee shall:
1. Notify the licensing agency of additions to the household in accordance with R21-6-411;
2. Ensure that each new household member complies with the requirements specified in subsections (A), (B), and (C); and
3. Notify the licensing agency and obtain OLR approval of proposed changes in the sleeping arrangements for each household member and for each foster child.

E. The applicant's awareness that a household member failed to disclose full and accurate information may constitute grounds for an adverse licensing action if the applicant does not attempt to inform the licensing agency of the incomplete or inaccurate information.

F. Failure by a household member to pass a protective services registries background check, to obtain a fingerprint clearance card, or to cooperate with the licensing process may result in an adverse licensing action.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-303. Training Requirements

A. Before OLR issues an initial license, the applicant shall complete and submit evidence of completion of:
1. The minimum number of hours of training required by A.R.S. § 8-509;
2. The training curriculum approved by the Department, which includes training in how to exercise the reasonable and prudent parenting standard;
3. CPR training, which requires the demonstration of CPR skills, and is taught by an instructor certified by a nationally recognized association such as the American Red Cross, the American Heart Association, or the National Safety Council; and
4. First aid training, taught by:
   a. An instructor certified to teach first aid that conforms to the requirements of a nationally recognized association such as the American Red Cross or the National Safety Council; or
   b. A doctor of medicine, physician assistant, registered nurse, paramedic, or emergency medical technician who has a current license or certification to practice.

B. After, initial licensure as required by A.R.S. § 8-509 the foster parent shall:
1. In addition to CPR certification and first aid training complete a minimum of six hours of training on topics relevant to the health, growth, development, or welfare of a child, or as recommended by OLR, the licensing agency, or the Child Placing Agency;
2. Present evidence of current CPR certification that meets the standards specified in subsection (A)(3); and
3. Present evidence of current first aid training that meets the standards specified in subsection (A)(4).

C. The applicant or foster parent shall complete additional training required by the Department, licensing agency, or Child Placing Agency based on the specific needs of the foster parent or of a foster child.

D. OLR may waive the requirements for CPR and first aid training if the foster parent has current certification or licensure as a doctor of medicine, physician assistant, registered nurse, paramedic, or emergency medical technician.

E. OLR may waive the requirement for CPR training if an applicant or foster parent has a physical limitation preventing them from performing CPR, unless the applicant or foster parent

demonstrates that he or she can perform CPR with tools or devices designed for that purpose. A signed physician's statement shall document the limitation. OLR may, at its discretion, restrict the license of such a foster parent to a specific foster child or population.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-304. Life Safety Inspection

A. A foster parent is responsible for ensuring compliance with the Life Safety Inspection rules specified in Chapter 8 of this Title.

B. An applicant and foster parent shall cooperate with OLR and the licensing agency when performing the Life Safety Inspection.

C. OLR shall:
1. Conduct a full inspection to verify compliance with Life Safety Inspection rules:
   a. Before an initial license is issued,
   b. Before an amended license is issued for a new location, and
   c. At least every two years;
2. Conduct an inspection to verify compliance with specific Life Safety Inspection rules following notification of significant structural modifications to a home or the addition of a pool, as defined by R21-6-101(59); and
3. Permit and encourage the applicant or licensee to make necessary corrections at the time of an inspection. For corrections that cannot be made immediately, the inspector shall explain how OLR or the licensing agency will verify corrections at a later date.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-305. Nurturing Responsibilities

A foster parent shall nurture a foster child by:
1. Providing the child with opportunities to develop emotionally, socially, culturally, physically, and educationally, as appropriate to the child's skill and developmental level;
2. Helping the child develop a positive identity by respecting the child's race, ethnicity, religion, gender, culture, and sexual orientation;
3. Providing the child with opportunities to make choices and to express preferences appropriate to the child's age and developmental level;
4. Providing the child with a variety of safe and developmentally appropriate play equipment, toys, and recreational supplies;
5. Practicing positive discipline;
6. Assisting the child with day-to-day concerns;
7. Providing the child with assistance, comfort, and emotional support to ease the distress associated with coming into care and with related transitions;
8. Assisting in maintaining the child's connection to their family, friends, community, and culture; and
9. Providing opportunities for the child to contact family members by means of face-to-face contact, mail, telephone, or other modes of communication, unless otherwise directed by the Child Placing Agency.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-306. Supervisory Responsibilities

A. A foster parent shall commit the time necessary to provide each foster child with care and supervision in accordance with licensing requirements and based on the child's age, developmental level, and maturity.

B. A foster parent shall implement the alternative supervision plan, as prescribed by R21-6-331, or R21-6-332 as applicable, if the foster parent must leave any of the following foster children in the care of another person:
1. Medically complex child,
2. Child receiving therapeutic foster care, or
3. Child diagnosed with a developmental disability.

C. For routine child care of a foster child or unless prescribed in subsection (B), a foster parent shall have arrangements approved by the Child Placing Agency and the licensing agency. For the purpose of this subsection, "routine care" refers to care that is recurrent and predictable, including preschool, after school care, or care that allows the foster parent to attend recurring activities.

D. Except as prescribed in subsections (B) and (C), a foster parent may independently select an adult to provide short-term care or supervision that is not routine. For the purpose of this Section, "short-term" means a time period that does not exceed 24 hours in a nonemergency and does not exceed 72 hours in an emergency.
1. A foster parent shall use careful and sensible judgment in selecting an adult to provide short-term care or supervision for a foster child and shall ensure that the adult has the ability to meet the specific needs of a foster child.
2. Before leaving a foster child with an adult to provide short-term care or supervision, a foster parent shall provide the adult with:
   a. Information about the child's behavioral health, medical, or physical condition that is necessary for the adult to provide care;
   b. Medication prescribed to be administered to the child, and any relevant instructions for the administration of the medication; and
   c. Emergency information for contacting the child's physician, the Child Placing Agency, the licensing agency, and the foster parent.
3. The foster parent shall notify the licensing agency and obtain approval from the Child Placing Agency before the short-term care exceeds:
   a. Twenty-four hours in a nonemergency situation. Examples of a nonemergency situation include going out to dinner, running errands, grocery shopping, and participation in a special training activity.
   b. Seventy-two hours in an emergency situation. Examples of an emergency situation include a death in the family, serious illness of a family member, and foster parent illness.

E. A foster parent shall use careful and sensible judgment:
1. To protect each foster child from harm and teach the foster child to manage risks as permitted by the child's age, developmental level, and maturity; and
2. In determining when additional help or support is needed to ensure the health, well-being, and educational needs of a foster child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-307. Reasonable and Prudent Parenting Standard

A. A foster parent shall use a reasonable and prudent parenting standard to promote normalcy for children in his or her care by

encouraging participation in age or developmentally appropriate activities to the greatest extent possible.

B. Such activities may include giving permission for a foster child to:
1. Spend time alone or with friends;
2. Participate in clubs or extracurricular activities, or on teams: and
3. Attend birthday parties with friends or sleep-overs.

C. A foster parent's exercise of the reasonable and prudent parenting standard, shall not conflict with any appropriate court order or case plan.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-308. Positive Discipline

A. A foster parent shall:
1. Provide positive discipline that is appropriate to the age, life experience, and developmental level of a foster child;
2. Establish well-defined and clearly communicated rules that set the limits of behavior;
3. Develop and implement reasonable, developmentally appropriate, and consistent rewards and consequences;
4. Use disciplinary methods that help a foster child build self-control, self-reliance, and self-esteem;
5. Inform the Child Placing Agency and the licensing agency of behaviors displayed by the foster child that endanger the health, safety, or well-being of the child or others; and
6. Abide by Department policy and rule related to positive discipline and prohibited practices under subsection (B).

B. A foster parent shall not use or threaten to use, or engage in and shall not permit any other person to use or engage in, the following or similar punishment or maltreatment of a foster child:
1. Any form of physical punishment, including hitting, spanking, biting, pinching, shaking, slapping, smacking, punching, or kicking;
2. Deprivation of essential nutrition, clothing, bedding, shelter, medical care, or sleep;
3. Force-feeding, except as prescribed by a licensed medical professional;
4. Locked confinement in a room or small area;
5. A consequence that requires a foster child to remain silent or motionless or to be isolated for a time period that is not developmentally appropriate;
6. Mechanical restraint. A mechanical restraint is an article, device, or garment that:
   a. Restricts a foster child's mobility, freedom of movement, or the movement of a portion of a child's body;
   b. Cannot be removed by the foster child; but
   c. Does not include an orthopedic, surgical, or medical device that allows a foster child to heal from a medical condition or to participate in a treatment program.
7. Humiliation, verbal abuse, or profane language targeting a foster child;
8. Derogatory remarks about the foster child, the child's identity, or about a person who is significant to the child;
9. Threats to remove the foster child from the home;
10. Cruel, severe, depraved, humiliating, or frightening actions or statements;
11. Noxious stimuli as a consequence, including putting soap, vinegar, or hot sauce into a foster child's mouth;
12. Denial of a foster child visitation or communication with the child's birth family members or with a significant person when such denial is not approved by the Child Safety Worker, the Child Safety Worker's supervisor, or ordered by the Court; or
13. Over-the-counter or prescription medication for the purpose of restraining or sedating a foster child without a physician's order.

C. A foster parent shall notify the Child Placing Agency and the licensing agency within 24 hours of a physician ordering a medication for the purpose of behavior management.

D. The use of physical restraint of a foster child is prohibited except to protect a foster child, foster parent, or another person from imminent physical harm resulting from a foster child's sudden, out-of-control behavior.
1. Only a foster parent specifically trained in crisis intervention may use physical restraint on a foster child.
2. No person shall use physical restraint for the purposes of discipline or convenience.
3. A trained foster parent shall administer physical restraint in the least restrictive manner possible to protect the child or others and cease when the child becomes calm.
4. A foster parent shall notify the Child Placing Agency and the licensing agency within 24 hours of the use of physical restraint as required by R21-6-326.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-309. Capacity Requirements

A. The maximum capacity of a license shall not exceed five foster children, and may be restricted to fewer than five, if the foster home provides special services under R21-6-331 or an increase is not justified under subsection (F).

B. The total number of children in a foster home at one time, including the children of the foster parent and the children of a household member, shall not exceed eight.

C. Subject to subsection (F), OLR may permit an applicant or licensee to exceed the maximum number of children in the home:
1. To keep a sibling group together, if approved in writing by the DCS Director's office or designee;
2. If the total number of foster children exceed five and the additional requirements specified in R21-6-331 are met for a Group Foster Home; or
3. If the children living in the applicant or licensee's home would exceed eight, including any foster children, and the applicant or licensee meets the requirements of subsection (F);
4. To keep a foster child in the home as of the effective date of this Section.

D. The total number of children in the foster home at one time, including the children of the foster parent and any household member, any child placed for respite care, child care services, or babysitting shall not exceed:
1. Four who are five years of age or younger in the care of one adult; and
2. Two who are less than one year of age in the care of one adult.

E. OLR may permit the licensee to exceed the age limits of children in the foster home, as specified in subsection (D), to accommodate multiple birth siblings.

F. Recommendations of the licensing agency and decisions of OLR to establish or increase the capacity of a foster home or to exceed the limits as indicated in subsections (B) and (C), shall be justified by:

1. Adequate sleeping arrangements (as specified by R21-6-310 and R21-6-311),
2. The support network available to the foster parent, and
3. The licensee's willingness and ability to provide care for each additional foster child.

G. A foster parent is limited to the capacity, age, gender, and other conditions or restrictions specified on the license when providing care, including respite care.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-310. Sleeping Arrangements

A. The sleeping arrangement for each foster child shall be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse or neglect.

B. A foster parent shall ensure compliance with the following sleeping arrangements:
1. A foster child shall not share a bedroom with an adult, with the following exceptions:
   a. A foster child less than the age of three years may share a bedroom with a foster parent.
   b. A foster child age three years and older may share a bedroom with a foster parent when:
      i. The child temporarily needs the attention of the foster parent during sleeping hours, or
      ii. The sleeping arrangement and the reason for it are approved by the Child Placing Agency.
   c. A foster child who has regularly shared a bedroom with another child who has turned 18 years of age may continue to share the bedroom unless the Child Placing Agency determines that the arrangement is contrary to the best interests of the foster child.
2. Any child in the home, aged six years and older, shall not share a bedroom with a foster child of the opposite gender, except as permitted by subsection (C).

C. A foster child, aged six years and older, may share a bedroom with a sibling of the opposite gender:
1. When the Child Placing Agency grants written approval for the purpose of facilitating a smooth transition for a child into the foster home;
   a. The Child Placing Agency shall limit such approval to the first 60 days of placement; unless
   b. The Child Placing Agency makes a written finding after 60 days and annually thereafter that is consistent with the case plan of all siblings sharing the bedroom and it is in the best interest of all of the siblings to continue to share the bedroom;
2. When there are no safety issues, such as that listed in subsection (C)(3)(a) and
3. The Child Placing Agency shall not grant approval:
   a. If either child has a history of sexual abuse, or
   b. Solely for the convenience of the foster parent,

D. A foster child who is a minor parent may share a bedroom with his or her child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-311. Bedrooms, Beds, and Bedding

A. The placement of a foster child shall not displace another foster child or a household member from a bedroom to a space unrelated to sleeping.

B. A foster parent shall provide a foster child with a bedroom that accommodates the privacy and safety needs of the child and that is a finished room demonstrated by:
1. Floor-to-ceiling walls,
2. A door with a working doorknob or latch,
3. Lighting,
4. Ventilation,
5. Appropriate heating and cooling, and
6. A window or door that opens directly to the outdoors and is accessible for emergency evacuation.

C. A foster parent shall not use a space used as a closet, passageway, or primarily for purposes unrelated to sleeping as a bedroom for a foster child.

D. The bedroom for a foster child shall be large enough to accommodate a bed, furniture to store and display personal belongings, and space for the child to dress and move about.

E. A foster parent shall provide each foster child with a bed that is safe and appropriate based on the child's age and special needs. For the purpose of this Section, "bed" does not include sleeper sofas, rollaway beds, couches, cots, portable crib such as Pack 'n Play, sleeping bags, or mats, unless approved by OLR on a temporary basis not to exceed six days.
1. A foster parent shall ensure that:
   a. Each foster child is provided with a separate bed or crib, as appropriate;
   b. A foster child less than the age of three years does not sleep on a waterbed; and
   c. A foster child does not sleep on the top tier of a bunk bed or similar style bed in which the top of the mattress is elevated four or more feet above the floor, if the child:
      i. Is less than the age of six years,
      ii. Has a disability that limits mobility, or
      iii. Has a seizure disorder.
2. A foster parent may:
   a. Provide a foster child with a used mattress if the mattress is sanitary; and
   b. Allow a foster child not identified by subsection (E)(1)(c) to sleep in a bunk bed or similar style bed in which the top of the mattress is elevated four or more feet above the floor, if:
      i. The top bunk is securely fastened to the side frames;
      ii. The top bunk has guard-rails that extend at least five inches above the mattress surface to prevent a child from rolling off;
      iii. The top bunk has cross ties or other secure structures under the mattress foundation to prevent the mattress from falling through the frame;
      iv. The distance between the two beds or between the top bunk and the ceiling is sufficient to allow the child to sit upright while in bed; and
      v. The bunk bed does not exceed two tiers.

F. A foster parent providing respite care for a foster child may use a sleeper sofa, rollaway bed, couch, cot, portable crib such as a Pack 'n Play, sleeping bag, or mat as an acceptable sleeping accommodation provided that:
1. The respite care does not exceed 14 consecutive days, and
2. The accommodation does not compromise the health or safety of the child.

G. Except as provided in subsection (H), bedding for a foster child shall be clean and shall include:
1. A pillow;
2. Bottom or fitted sheet;
3. A top sheet, blanket, or cover, as appropriate; and
4. A waterproof mattress cover, as needed.

H. Bedding for infants shall be clean and shall not include pillows, blankets, bumper pads, or other soft items or surfaces.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-312. Meals and Nutritional Needs
A foster parent shall:
1. Encourage a foster child to participate in meals as a member of the family;
2. Provide a foster child with a well-balanced and nutritionally adequate diet; and
3. Provide for the special dietary needs of a foster child, as determined by a medical or nutritional authority or as is customary in the child's religion or culture.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-313. Hygiene and Daily Needs
The foster parent shall provide a foster child with:
1. Clean clothing and shoes that are in good repair and appropriate to the child's age, size, developmental level, gender, gender identity, the weather conditions, and the occasion;
2. The supplies, instruction, and assistance needed to care for the child's hygiene, including tooth brushing, bathing, hair care, using the toilet, hand washing, diapering, menstrual care, and shaving, as appropriate; and
3. Privacy while dressing, bathing, and during the care of other personal needs, as developmentally appropriate.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-314. Health and Medical Care
The foster parent shall protect and care for the health and well-being of a foster child and:
1. Provide necessary first aid and care to treat common childhood ailments and injuries;
2. Obtain 10 well-child visits for each child aged from birth to two years as described in subsections (a)-(h) below. A well child visit includes both a medical and vision examination as appropriate to the child's age. A foster parent shall obtain a well-child visit when a foster child is the following ages:
   a. Three to five days:
   b. One month;
   c. Two months;
   d. Four months;
   e. Six months;
   f. Nine months;
   g. Twelve months; and
   h. Fifteen Months;
3. Obtain an annual well-child visit for each child older than two years of age.
4. Obtain routine dental examinations for each foster child older than one year of age at least once every six months and more frequently as needed for other services, such as filling cavities and orthodontics;
5. Review the child's medical, vision, and dental records if available; and if the foster child has not had a medical, vision, or dental exam within the past year, the foster parent shall schedule the child for an exam within two weeks after the foster child is placed with the foster parent;
6. Obtain necessary care and treatment for medical, vision, dental, behavioral health, and other services identified in the placement agreement specified under R21-6-314;
7. Obtain immunizations based on the current recommended immunization schedule published by the Centers for Disease Control and Prevention, unless specified otherwise in the care plan for the foster child;
8. Administer prescription medication only as prescribed and ensure no lapse occurs in the administration of the prescription medication to the foster child;
9. Carry out the written and verbal instructions from qualified professionals regarding the medical, vision, dental, and therapeutic needs of the foster child and notify the Child Placing Agency when written and verbal instructions from multiple medical professionals conflict; and
10. Ensure that a foster child, 12 months of age and younger, is placed to sleep on the foster child's back to reduce the risk of Sudden Infant Death Syndrome (SIDS), unless otherwise authorized in writing by the child's physician.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-315. Smoking Restrictions
To reduce the risk of secondhand smoke, the foster parent shall ensure that smoking any substance, including tobacco, e-cigarettes, and prescribed marijuana through any delivery system, is prohibited and does not occur at any time in the foster home, or at any time when a foster child is present in a vehicle used to transport a foster child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-316. Transportation Responsibilities
A. A foster parent shall provide or arrange appropriate local transportation to meet the routine educational, medical, recreational, social, religious, and therapeutic needs of a foster child.
B. When a foster child is transported by or at the direction of a foster parent, the foster parent shall ensure that the vehicle, at a minimum:
1. Is maintained in safe operating condition;
2. Is properly licensed, registered, and has liability insurance; and
3. Has passenger safety restraints available and:
   a. Each foster child less than the age of five years or weighing less than 40 pounds is properly secured in a child car seat and child restraint system that is appropriate to the height, weight, and physical condition of the child;
   b. Each foster child five to eight years of age who weighs more than 40 pounds, but is less than four feet nine inches in height is properly secured in a child restraint system that is appropriate to the height, weight, and physical condition of the child;
   c. Each foster child not covered by subsections (a) and (b) is properly secured with a seat belt;
   d. Each foster child with a disability that prevents the child from maintaining head and torso control while sitting is secured in a car bed, harness, or other device designed to protect the child during transportation; and
   e. If a foster child is transported in a wheelchair, the child is properly secured with a floor-mounted seat

belt, and the wheelchair is properly immobilized using lock-down devices.

C. A foster parent shall not leave a foster child unattended during transportation if the child:
   a. Is less than seven years of age;
   b. Has a developmental disability; and
   c. Is more than seven years of age and that the child is physically and emotionally incapable of traveling alone;

D. The Child Placing Agency shall ensure that the foster parent has all of the equipment in place and properly installed to meet the requirements of subsection (B) prior to placement.

E. A foster parent shall ensure the following safety requirements for drivers selected by the foster parent to transport a foster child:
   1. The driver has a valid driver license; and
   2. The driver practices safe, defensive driving and obeys all traffic laws.

F. A child shall not be transported in a truck bed, cargo area, camper, or in a trailer attached to a motor vehicle.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-317. Education and Development
The foster parent shall:
1. Communicate developmental and educational progress and challenges to the Child Safety Worker or Child Placing Agency, including any noted developmental delays;
2. Send a school-age foster child to public school unless alternative educational arrangements, such as private or home schooling, have been approved in the child's case plan, by the Child Safety Worker's supervisor, or the Child Placing Agency supervisor;
3. Work with the Child Safety Worker or Child Placing Agency to determine educational needs beyond those provided in the school setting and make reasonable efforts to obtain these educational services that are available from the school, district, or other providers for education services;
4. Encourage the foster child's academic progress by making reasonable efforts to ensure the completion of homework and participating in parent-teacher conferences, the Individualized Education Program (IEP), and Individualized Family Service Plan (IFSP) Meetings, as appropriate; and
5. Make reasonable effort to:
   a. Ensure school attendance; and
   b. Schedule appointments, visitations, and other activities during hours that do not interfere with school.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-318. Religious and Cultural Practices

A. The foster parent shall:
   1. Protect and support a foster child's right to participate in the child's religious and cultural practices,
   2. Coordinate with the licensing agency or Child Placing Agency, to provide opportunities for a foster child's participation in the child's religious and cultural activities, and
   3. Not compel a foster child to participate in the foster parent's religious or cultural activities if it is contrary to the child's cultural or religious practices or the wishes of the child's birth parent.

B. If there is a conflict between the religious or cultural practices of a foster parent and a foster child, the foster parent shall notify the licensing agency, which shall notify the Child Placing Agency, so that alternative arrangements may be made.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-319. Recreation
The foster parent shall:
1. Encourage a foster child to participate in appropriate indoor and outdoor recreation;
2. Provide adequate supervision, protection, and guidance during the use of recreational equipment, including swimming pools;
3. Ensure that the use of recreational equipment is in accordance with manufacturers' guidelines; and
4. Promote the foster child's use of appropriate safety gear for recreational activities.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-320. Out-of-State Travel
Before taking a foster child out of Arizona for more than seven consecutive days, a foster parent shall notify the licensing agency and Child Safety Worker of the destination and dates of travel.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-321. Rights of a Foster Child

A. A foster parent shall ensure that the rights of a foster child as listed in A.R.S. § 8-529 are protected and upheld. In addition, a foster child has the right to:
   1. Live in a safe, clean, and humane environment;
   2. Be free to express their gender identity and sexual orientation;
   3. Be free from physical, sexual, emotional, or other abuse;
   4. Be treated with dignity and respect by foster parents and household members;
   5. Protection from exploitation and to learn the skills needed to protect him or herself from exploitation;
   6. Protection for and access to his or her adaptive aids, if applicable;
   7. Retain personal belongings when moving from the foster home, including usable clothing, furniture, electronic equipment, bicycles, toys, and other items purchased specifically for or given to the child;
   8. Access his or her personal spending money, unless access is limited by the Child Placing Agency as part of a documented plan approved by the Child Placing Agency such as a plan to protect the child from exploitation or a pattern of misuse;
   9. Be taught how to manage personal spending money;
   10. Assume responsibility for some household duties in accordance with the child's age, health, and ability; assigned responsibilities and tasks shall not deprive the child of school, sleep, reasonable play time, or study periods;
   11. Participate in activities as a member of the family, including meals, outings, and celebrations;
   12. Participate in extracurricular, enrichment, social, and community activities, including sports, school activities, cultural programs, and religious groups based on a reasonable and prudent parenting standard. This participa-

tion may be restricted by reasonable curfew, cost considerations, a court order, or as agreed upon by the foster parent and the Child Placing Agency;
13. Be encouraged to have contact with and visit family members, consistent with the case plan, unless prohibited by court order;
14. Have visitors, within reasonable boundaries established by the foster parent, and unless prohibited by court order;
15. Confidential communication with his or her Child Safety Worker or Child Placing Agency, advocates, attorney, guardian ad litem, and guardian; and
16. Express dissatisfaction with or file a complaint against a foster parent or the Child Placing Agency without retaliation.

B. A foster child over the age of puberty, or as early as can be reasonably expressed by the child, shall have the right to specify the gender of the person to assist the child with personal care, if needed and appropriate.

C. A foster child with a disability has the right to participate in typical daily activities with the least amount of physical assistance necessary to accomplish the task and to live in a home adapted to protect the child and to assist the child in experiencing developmentally appropriate independence.

D. If a foster parent is not able to protect or uphold one or more of the above rights, the foster parent shall immediately notify the Child Placing Agency and the licensing agency so that alternative arrangements or assistance may be made to protect the rights of the child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-322. Confidential Information

A. A foster parent shall protect and maintain the confidentiality of a foster child, by protecting and safeguarding all personally identifiable information about a foster child and his or her family.

B. Information related to the reason for a foster child's placement or related to a foster child's family is considered confidential information, under A.R.S. § 8-807 and A.R.S. § 8-502.

C. A foster parent may only share a child's confidential information strictly on a need-to-know basis:
1. With health care providers, schools, child care providers, and legal representatives, as appropriate; or
2. As authorized by the Child Placing Agency or guardian.

D. A foster parent shall not share information or photos that identify a child as a foster child on the internet, including social media.

E. A foster parent shall not share a foster child's information or photos that identify the child as a foster child, unless there is a need to know, with other individuals or organizations, including friends, co-workers, relatives, and neighbors.

F. A foster parent shall safeguard and maintain a foster child's records in a manner that prevents loss, tampering, or unauthorized access or use.

G. Failure to keep confidential a foster child's records or information may result in an adverse licensing action.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-323. Information and Records to Be Provided to the Foster Parent

A. The Child Placing Agency shall provide a foster parent with the following documents and information, to the extent that this information is available for each foster child within 30 days:
1. The insurance card or insurance identification number and written consent authorizing the foster parent to access medical records and obtain routine, nonsurgical, and emergency medical care for the child;
2. A summary of the child's medical history and the name of the child's last known physician;
3. A summary of the child's education history and the name of the school most recently attended by the child;
4. A summary of the child's social history;
5. Restrictions or limitations to the sharing of confidential and personally identifiable information about the child;
6. Information about the child's behavioral health, medical, or physical condition that is necessary or beneficial to provide quality care;
7. Medication that is prescribed to be administered to the child, and any relevant instructions for the administration of the medication;
8. The religious and cultural beliefs and preferences of the child and of the child's birth family;
9. Emergency contact information for the child, including a means to contact the Child Placing Agency;
10. Placement packets from prior placements, if applicable;
11. A copy of the child's case plan; and
12 A placement agreement that specifies the following:
    a. Requirements and restrictions related to the child's diet, personal care, and activities;
    b. Requirements and restrictions related to the supervision of the child;
    c. Requirements and restrictions for interaction with the child's family and other persons;
    d. The person responsible for obtaining and transporting the child to needed services. These services include medical care, vision care, dental care, counseling, and other services or treatment;
    e. A plan for the purchase, installation, and maintenance of environmental modifications to accommodate the disabilities of a child, if applicable; and
    f. A plan for the completion of training needed by the foster parent to care for the special needs of the child, if applicable.

B. A foster parent shall sign and abide by the placement agreement, described in subsection (A)(12).

C. A foster parent shall maintain and store the foster child's records from DCS in a secure place.

D. The foster parent shall not use the information obtained to initiate discussions of the child's history or experience of abuse or neglect with the child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-324. Records Maintained by the Foster Parent

A. A foster parent shall maintain a record throughout the care of the foster child of:
1. Each foster child's contact with family members and other significant persons; and
2. Educational, medical, vision, dental, or therapeutic care provided to the foster child while living in the home.

B. At the discretion of the Department or the licensing agency, a foster parent shall, when requested, provide proof of how the funds designated for a foster child were expended.

C. A foster parent shall safeguard a foster child's records to prevent loss, tampering, and unauthorized access.

D. A foster parent shall collect and maintain information and materials significant to a foster child's personal history. The collection is sometimes referred to as a "life book":
1. Typically includes photos, letters, report cards, school projects, artwork, and souvenirs; and
2. Is the property of the child and will go with the child if he or she moves from the foster home.

E. Within seven days of the end of a foster child's placement in a home, the foster parent shall provide the Child Placing Agency with:
1. The records described in subsection (A); and
2. A written description of the child's daily routine, personal preferences, and habits.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-325. Participation in the Service Team

A. The purpose of the service team is to ensure collaboration on the development and review of a foster child's case plan. A foster parent is a member of the service team for each foster child in his or her care. The service team also includes:
1. The foster child, as appropriate to the child's age and developmental level;
2. The foster child's family, including persons who have a significant relationship with the family or the child;
3. A representative of the Child Placing Agency;
4. A representative of the licensing agency;
5. Court-appointed advocates; and
6. Persons providing services to the foster child, including attorneys, physicians, therapists, teachers, tribal representatives, and law enforcement personnel.

B. A foster parent shall participate as a member of the service team by:
1. Attending team meetings when:
   a. The foster parent receives reasonable advance notice of the date, time, and location of the meeting; and
   b. The meetings are held at a time and place that is accessible to the foster parent and compatible with the foster parent's work and child care schedules.
2. Participating in team meetings through alternative means, which may include:
   a. Conference calls, and
   b. Providing advance comments to the Child Placing Agency or to other team members who will attend the meeting.
3. Reporting to the team on the child's progress and concerns.
4. Assisting in the review and development of the case plan.
5. Assisting the child in attending and participating in meetings, as appropriate to the child's schedule, age, and developmental level.

C. A foster parent shall implement the case plan by:
1. Performing the tasks assigned to the foster parent in the case plan;
2. Helping a foster child to attain the goals identified in the case plan; and
3. Helping a foster child to obtain services specified in the case plan.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-326. Notification Requirements; Unusual Incident

A. A foster parent shall immediately notify the Child Placing Agency and licensing agency of the following incidents. For the purpose of this section, "immediately" means as soon as possible, following the notification of emergency services (911).
1. Death of a foster child;
2. Unexplained absence of a foster child;
3. Unauthorized removal or attempted removal of a foster child from the care and supervision of the foster parent;
4. A serious illness, injury, or mental health crisis of a foster child requiring hospitalization or emergency room treatment;
5. An allegation or the discovery of a sign of abuse or neglect of a foster child;
6. Arrest of a foster child or the involvement of a foster child with law enforcement that does not lead to arrest;
7. Fire or other situation requiring overnight evacuation of the home;
8. Incidents that involve or are likely to involve the media; or
9. Any other unusual incident that seriously jeopardizes the health, safety, or well-being of a foster child.

B. A foster parent or the licensing agency shall document the incident on a form provided by the Department.

C. A foster parent shall notify the Child Placing Agency and the licensing agency within 24 hours of the following incidents:
1. Injury, illness, change of medication, or medication error that requires a foster child to be seen by a doctor of medicine, physician assistant, or registered nurse practitioner;
2. Theft of money or property belonging to a foster child;
3. Significant damage to the property of a foster child;
4. Injury to others or significant damage to the property of others caused by a foster child;
5. The use of physical restraint to control a foster child's sudden, out-of-control behavior;
6. Arrest of a household member or involvement of a household member with law enforcement that does not lead to an arrest;
7. Changes in the household that affect the foster parent's ability to meet the needs of the foster child;
8. Life-threatening illness, injury, or the death of a household member; or
9. Incidents involving a DCS Report or investigation.

D. Within 24 hours of the occurrence of an incident specified in subsection (A) or (C), a foster parent shall provide the licensing agency in writing with:
1. A description of the incident, including the date and time of occurrence;
2. The names and contact information for any persons involved in the incident;
3. The names and contact information for any person who witnessed the incident; and
4. The measures taken by the foster parent to address, correct, or resolve the incident.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-327. Notification Requirements; Home or Household Changes

A. A foster parent shall notify the licensing agency of any changes in the family or household composition, as soon as the foster parent is aware of the change including:
1. Marriage of a foster parent;
2. Divorce or separation of a foster parent;
3. Death of a foster parent or of a household member;
4. Addition or departure of a household member from the home, including the birth or adoption of a child;

5. Any changes in the living arrangements or circumstances of the unlicensed spouse when a foster parent is married but licensed individually under R21-6-408(B); or
6. The addition of a visitor or household member to the foster home for:
   a. 30 or more consecutive days, or
   b. 30 or more cumulative days in a year.

B. A foster parent shall notify the licensing agency of substantial changes to the home, foster home, or premises, including:
1. Moving or relocation to another home;
2. The addition of a pool, as defined in Article 1 of this Chapter; or
3. Significant structural modifications to the home. For the purpose of this section, "structural modification" includes:
   a. Adding or removing walls, windows, or doors; or
   b. Converting a garage, attic, basement, or other similar space into a bedroom.

C. If a foster parent has advance knowledge of an event or change listed in subsection (A) or (B), the foster parent shall give the licensing agency reasonable advance notice of the anticipated event or change. "Reasonable advance notice" means notice that permits sufficient time for:
1. The licensing agency to request a Life Safety Inspection, in accordance with R21-6-211;
2. OLR to issue an amended license, as prescribed in R21-6-410; and
3. The foster parent to continue providing care and supervision in the licensed foster home without disruption of the placement.

D. The foster parent shall notify and obtain approval from DCS and the licensing agency before receiving a child from a Child Placing Agency, other than DCS.

E. Failure to notify the licensing agency of an event or change may result in an adverse licensing action.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-328. Emergency and Disaster Plan

A. A foster parent shall develop and maintain in the home a written emergency and disaster plan that includes:
1. Contact information for each foster child, including the name and telephone number of the primary care physician and the Child Placing Agency;
2. An evacuation plan for the home, as required by Chapter 8 of this Title; and
3. A plan for relocation from the home in the event of displacement due to flood, fire, the breakdown of essential appliances, or other disasters.

B. A foster parent shall provide a copy of the relocation plan to the Child Placing Agency for each foster child and to the licensing agency.

C. As appropriate to the foster child's age and developmental level, a foster parent shall review and practice the evacuation plan with the child:
1. Within 72 hours of the child's placement in the home,
2. Within 72 hours of the foster parent's relocation to another home, and
3. At least once each year following the child's placement in a foster home.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-329. Special Provisions for Respite Care

A. A foster parent who provides respite care shall comply with all foster home requirements.

B. A foster parent who provides respite care may simultaneously provide respite care, family foster care, and receiving care so long as the total number of children in the foster home at any one time does not exceed the ratios prescribed in R21-6-309 and the terms of the foster home license.

C. A foster parent who provides respite care shall request and receive information and instruction from the regular foster home licensee on at least the following:
1. Information and instruction about the specific personal care of a child in respite care;
2. Information and instruction about the provision of medications required by a child in respite care;
3. Behavior management policies and practices and specific instructions for a child in respite care; and
4. Emergency contacts and telephone numbers for a child in respite care.

D. A foster parent who provides respite shall comply with the requirements of R21-6-316. The respite provider shall have properly installed and adequate safety restraints and child car seats appropriate to the foster child's age for each child in respite care being transported. A foster parent may provide the equipment required by this subsection to the respite provider.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-330. Special Provisions for an In-home Respite Foster Parent

A. A person applying for licensure solely as an in-home respite foster parent shall comply with all requirements in this Chapter except as otherwise provided in this Section.

B. An applicant for an in-home respite foster parent is not required to provide the following:
1. Immunization records for each child in the applicant's household as required by R21-6-403;
2. Documentation of sufficient income as required by R21-6-403;
3. A statement explaining the child care arrangements the applicant would make for a foster child, or the applicant's own children, during the applicant's working hours;
4. A statement explaining how activities related to a business activity will not interfere with the care of a foster child;
5. A description of the applicant's home and neighborhood;
6. Fingerprinting or a criminal history check for household members, other than the applicant for in-home respite care, as required by R21-6-302; and
7. Contact information for the foster child's Child Safety Worker.

C. The following rules do not apply to a person seeking licensure solely as an in-home respite foster parent:
1. R21-6-304. Life Safety Inspections;
2. R21-6-311. Bedrooms, Beds and Bedding;
3. Life Safety Inspection requirements in Chapter 8 of this Title;
4. R21-6-314. Health and Medical Care; subsections (2)-(5);
5. R21-6-323. Information and Records to be Provided to the Foster Parent, specifically the Placement Agreement requirements;
6. R21-6-324. Records Maintained by the Foster Parent, except to document any behavioral health incidents, medical care, provision of medication, and any other event or

service required by the case plan or which may be requested by the regular foster parent while the in-home respite foster parent has responsibility for the foster child in care;
7. R21-6-325. Participation in the Service Team, unless requested to do so;
8. R21-6-326. Notification Requirements; Unusual Incident, subsection (C)(7), unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules; and
9. R21-6-327. Notification Requirements: Home or Household Changes, unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules.

D. An in-home respite foster parent shall request and receive information and instruction from the foster parent on at least the following:
1. Information and instruction about the specific personal care of a foster child in respite care;
2. Information and instruction about the provision of medications required by a foster child in respite care;
3. Behavior management policies and practices and specific instructions for a foster child in respite care; and
4. Emergency contacts and telephone numbers for a foster child in respite care;
5. Household policies and practices for emergency situations; and
6. Routine household management practices that will provide for continuity in operation of the foster home for the comfort and support of a foster child in care.

E. An in-home respite foster parent shall not permit any unlicensed person to accompany or assist the in-home respite foster parent while providing respite care.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-331. Requirements for Certification to Provide Specialized Services

A. A license for a foster parent is a regular license.

B. If the foster parent has met the additional requirements for certification to provide specialized services, OLR shall document the area of certification on the regular license. If more than one person is identified on the license, both shall meet the additional requirements for certification to provide a specialized service; except the foster parent who is not the primary care giver is exempt from compliance with subsections (E)(1)(a), (E)(2)(a) and (b), (E)(3)(b) and (c), and (E)(4).

C. The foster parent shall comply with the requirements specified in this Section to renew the certification.

D. The certification to provide a specialized service:
1. Does not change the renewal date of the regular license; and
2. Shall expire at the next renewal date of the regular license.

E. The classes of foster homes that provide specialized services and the certification requirements are:
1. Receiving Foster Home. This is a home in which the licensed foster parent receives a foster child with limited notice and provides care for a limited period of time. The foster parent for a receiving foster home shall:
   a. Have three months' successful experience in child welfare, foster care, health care, education, or a related profession as approved by OLR. "Successful experience" means that the foster parent has been responsible for the health, safety, and well-being of a child for a minimum of 20 hours per week without any negative actions, such as termination for cause;
   b. Assist the Child-Placing Agency in assessing the needs of each foster child placed on an emergency basis;
   c. Assist the Child-Placing Agency in transitioning the foster child to another care setting.
   d. Shall be prepared to accept a foster child, according to the capacity and terms of the foster home license, 24 hours per day, seven days per week; and
   e. May be approved to simultaneously provide receiving care, family foster care, and respite care so long as the total number of children in the foster home at any time does not exceed the number approved in the regular foster home license, or any of the other limitations of the regular foster home license.
2. Medically Complex Foster Home. This is a foster home that is licensed with a maximum capacity of three foster children, and each foster parent has completed specialized training to provide care to foster children identified by the Department as having medically complex needs. Children with medically complex needs include those who have or are at risk for chronic physical or developmental conditions and who require health-related services beyond that required by children in general. The foster parent for a Medically Complex Foster Home shall:
   a. Have one of the following minimum experience or education:
      i. One year's experience as a licensed foster parent; or
      ii. Licensed or certified as a healthcare professional, such as a doctor, nurse, or certified nursing assistant; or
      iii Three months' successful experience in child welfare, foster care, health care, education, or a related profession as approved by OLR. "Successful experience" means that the foster parent has been responsible for the health, safety, and well-being of a child or adult with medically complex needs for a minimum of 20 hours per week without any negative actions, such as termination for cause; or
      iv. A bachelor's or graduate degree in healthcare, such as medicine or nursing.
   b. Not have employment or commitments that interfere with the foster parent's ability to meet the foster child's medical needs and schedule;
   c. Use adaptive equipment and encourage the foster child to use adaptive equipment to facilitate the child's participation in daily living activities;
   d. Provide the foster child with opportunities to participate in community activities on a regular basis unless there is a compelling medical reason not to do so;
   e. Develop and follow an alternate supervision plan, approved by the Department, Child Placing Agency, and the licensing agency, if the foster parent is not available to provide primary care and supervision to foster children with medically complex needs. The alternate supervision plan shall include:
      i. The name of each adult, age 18 years and older, who can provide supervision if the foster parent is not present;
      ii. Information about the foster child's medical, physical, or behavioral health condition that is necessary to provide care;

iii. Medication that is prescribed to be administered to the foster child while the foster parent is not present and any relevant instructions for the administration of that medication;
iv. Specialized training necessary to provide care and supervision; and
v. Emergency contact information for the foster child, including a means to contact the foster parent, the licensing agency, and the Child Placing Agency.

f. In addition to the training specified under R21-6-303, complete a minimum of 18 hours of training approved by the Department, prior to certification that includes:
i. An overview of the assessment categories for children defined as having medically complex needs by the Department;
ii. Medical and health care issues, procedures, and techniques;
iii. The purpose and safe use of medications;
iv. Overview of medication interactions and potential medication reactions; and
v. Positive behavior development;

g. Complete training to care for the special needs of a foster child, as indicated in the placement agreement; and

h. In addition to the training specified under R21-6-303, complete a minimum of 12 hours of specialized training prior to license renewal related to the medically complex needs of children and other approved topics by the Department that include:
i. Medical and health care issues, procedures, and techniques;
ii. The purpose and safe use of medications;
iii. Overview of medication interactions and potential medication reactions;
iv. Positive behavior development; and
v. Specialized training related to the medically complex needs of children.

3. Therapeutic Foster Home. This is a foster home that is licensed with a maximum capacity of three foster children, and each foster parent has received specialized training to provide care and services within a support system of clinical and consultative services to foster children with special behavioral health needs, as identified by the Department. In addition to meeting the requirements for a regular license, the foster parent for a Therapeutic Foster Home shall:
a. Be at least 21 years of age, and
b. Have at least one of the following minimum experience or education:
i. One year's experience as a licensed foster parent;
ii. Three months' successful experience in child welfare, foster care, behavioral health, education, or a related profession as approved by OLR. "Successful experience" means that the foster parent has been responsible for the health, safety, and well-being of a child or adult with behavioral health needs for a minimum of 20 hours per week without any negative actions, such as termination for cause; or
iii. A bachelor's or graduate degree in health care, social work, psychology, or a related behavioral health field.
c. Not have employment or commitments that interfere with the foster parent's ability to meet the foster child's special behavioral health needs, including supporting the foster child and as applicable, participating in in-home and community based services;
d. Provide the foster child with opportunities to participate in developmentally appropriate community based activities on a regular basis;
e. Develop and follow an alternate supervision plan, approved by the Child Placing Agency and the licensing agency, if the foster parent is not available to provide primary care and supervision for a foster child with treatment needs. The alternate supervision plan shall include:
i. The name of each adult, age 21 years and older, who can provide supervision if the foster parent is not present;
ii. Information about the foster child's behavioral, health, medical, or physical condition that is necessary to provide care;
iii. Medication that is prescribed to be administered to the foster child while the foster parent is not present and any relevant instructions for the administration of that medication;
iv. Specialized training taken by individuals in subsection (i) that is necessary to provide care and supervision of the foster child; and
v. Emergency contact information for the foster child, including a means to contact the foster parent, the licensing agency, and Child Placing Agency.
f. In addition to the training specified under R21-6-303, complete a minimum of 18 hours of training prior to certification, approved by the Department that includes:
i. Positive behavior development and de-escalation techniques,
ii. The purpose and safe use of medications, and
iii. Overview of medication interactions and potential medication reactions.
g. Complete training to care for the special needs of a foster child, as indicated in the placement agreement;
h. In addition to the training specified under R21-6-303, complete a minimum of 24 hours of training prior to license renewal. The Department shall approve the training curriculum and coordinate the training curriculum through a licensing agency. The training shall include:
i. Positive behavior development and de-escalation techniques,
ii. The purpose and safe use of medications, and
iii. Overview of medication interactions and potential medication reactions.

4. Group Foster Home. This is a home in which all licensed foster parents are certified to provide care for six to 10 foster children for the purpose of accommodating a specific sibling group, or as otherwise provided in A.R.S. § 8-514, for over capacity placements. In addition to meeting the requirements for a regular license, the foster parent for a Group Foster Home shall:
a. Have the following minimum experience or education:
i. History of care or contact with the specific children to be placed in the Group Foster Home; or

ii One year's experience as a licensed foster parent; or
iii Three months' successful experience in child welfare, foster care, education, or a related profession as approved by OLR. "Successful experience" means that the foster parent has been responsible for the health, safety, and well-being of a child for a minimum of 20 hours per week without any negative actions, such as termination for cause.

b. Uphold the age limitations of children prescribed by R21-6-309;
c. Conduct a fire drill at least once every three months;
d. Have at least two full bathrooms in the home; and
e. If recommended by OLR, or the Child Placing Agency, complete advanced training on positive behavior development, de-escalation techniques, or other topics related to the specific care needs of the foster children.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-332. Placement of a Child With a Developmental Disability in a Foster Home

A. OLR shall refer the foster parent to the DES Division of Developmental Disabilities (DDD), Office of Licensing, Certification and Regulation (OLCR) for licensing as a child developmental home, if the Department has placed a child with a Developmental Disability in a foster home and the foster home has:
1. No more than three placements, including the child with a Developmental Disability, or
2. More than three placements but the placements are only the child with the Developmental Disability and that child's siblings,

B. If the foster home is licensed by DES OLCR as a child developmental home, OLR shall place the regular foster home license on inactive status. The foster parent may reactivate the regular foster home license by complying with R21-6-413.

C. If the foster home is not licensed by the DES OLCR as a child developmental home, or the foster home has more than three, but no more than five placements, including the child with a Developmental Disability, the home may remain a regular foster home with the following requirements:
1. If the child with a Developmental Disability is eligible under A.R.S. § 36-559, OLR shall refer the foster parent to DES OLCR as an option to become HCBS certified; and
2. The foster parent shall follow written and verbal instructions and orders from qualified professionals regarding the medical, dental, habilitative, and therapeutic needs of the child with a Developmental Disability.

D. If the foster parent is not available to provide primary care and supervision for a foster child with a Developmental Disability, the foster parent shall develop and follow an alternate supervision plan, approved by the licensing agency and the Child Placing Agency in consultation with DES if the child with the Developmental Disability is eligible under A.R.S. § 36-559. The alternate supervision plan shall include:
1. The name of each adult, age 18 years and older, who can provide supervision if the foster parent is not present;
2. Information about the foster child's medical, physical, behavioral health condition, or other factors that put the child's health, safety, or well-being at risk that is necessary to provide care;
3. Medication that is prescribed to be administered to the foster child while the foster parent is not present and any relevant instructions for the administration of that medication;
4 Specialized training taken by individuals in subsection (1) necessary to provide care and supervision to the foster child; and
5. Emergency contact information for the foster child, including a means to contact the foster parent, the licensing agency, and the Child Placing Agency.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

ARTICLE 4. THE LICENSING PROCESS FOR FOSTER PARENTS

R21-6-401. Minimum Qualifications to Apply for a License

A. Any individual or married couple meeting the following minimum qualifications shall be eligible to apply for licensure as a foster parent regardless of gender, race, religion, political affiliation, national origin, disability, or sexual orientation.

B. All applicants shall submit a complete application and accompanying documentation for a foster home license.

C. To apply for a family foster home license, the applicant shall:
1. Be at least 21 years of age, except as provided in R21-6-419.
2. Reside in Arizona and be lawfully present in the United States.
3. Not have a record of withdrawing from the licensing application process or closing a license before the completion of an investigation or licensing inquiry, except as permitted under R21-6-414(I); and
4. Declare under oath that he or she:
   a. Has not committed a crime specified in Arizona Revised Statutes as a precluding crime for the issuance of a Level One fingerprint clearance card; and
   b. Is not a registered sex offender.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-402. Rights of the Applicant and the Foster Parent

A. In addition to the inspection and due process rights specified under A.R.S. § 41-1009, and A.R.S. § 8-530, the foster parent shall have the right to:
1. Participate in an orientation offered by OLR or a licensing agency, which provides the following information:
   a. An overview of the licensing process,
   b. A copy of, or instructions for, accessing the licensing rules,
   c. Requirements and information specific to the available licensing agencies, and
   d. The mission and philosophy of the Department.
2. Choose or transfer to a licensing agency approved by the Department, at no cost to the applicant or foster parent;
3. Be treated with courtesy, dignity, and fairness by the licensing agency and the Department;
4. Be free from discrimination in the licensing process on the basis of political affiliation, marital status, or sexual orientation;
5. Receive information and training pertinent to the responsibilities of a foster parent;
6. Receive advice and technical assistance provided by the licensing agency or OLR to assist the applicant or foster parent in understanding the licensing requirements;

7. Direct the licensing agency to enter the applicant's complete and accurate information for licensure via the Department's electronic database;
8. Appeal an adverse licensing action as described under R21-6-417;
9. Elevate concerns about the licensing process in writing to the program administrator for OLR.
10. Be free from retaliation by a licensing agency and the Department in the event of a disagreement, an appeal, or an elevation of concerns by the foster parent or applicant;
11. Be informed of and provided the opportunity to be heard in any adverse licensing action conducted by OLR that impacts the foster parent's or applicant's license;
12. Reasonably refuse placement or request removal of a child without reprisal from the licensing or Child Placing Agency; and
13. The confidential treatment of private information revealed in the licensing process in accordance with A.R.S. § 8- 502 and A.R.S. § 8-530.

B. Upon written request and payment of reasonable duplication and postage fees by a foster parent, the licensing agency shall forward a copy of the contents of the licensing records to an agency or organization for the purpose of assisting a foster parent who is being considered for a private or out-of-state adoptive placement, or any similar purpose.

C. Upon written request, OLR and a licensing agency shall permit a foster parent or applicant to access their licensing record, except as provided in subsection (E).

D. A foster parent shall be permitted to provide a written response to the Child Placing Agency and OLR on findings and comments in the home study, investigative reports, and any correspondence, with the exception of the items listed in subsection (E).

E. A foster parent or applicant shall not have access to the following:
1. Information supplied by confidential references during the licensing process;
2. Information protected from secondary dissemination under state or federal law, including DCS Reports and investigations and related records; or
3. The names of or identifying information for persons and organizations listed as sources in a licensing investigation or DCS Report or inquiry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-403. Application for an Initial License

A. An individual or married couple shall complete the application for an initial license accurately and in full via the Department's electronic database. The applicant may direct the licensing agency to enter the application.

B. The application for an initial license shall include:
1. The full legal name of each household member;
2. All other names and aliases, including birth names and names used in previous marriages, of each household member;
3. The current marital status of the applicant;
4. The date of birth of each household member, except other foster children, including evidence that the applicant is at least 21 years of age;
5. The Social Security Number of each adult household member, for the purpose of conducting a background check;
6. The relationship between the applicant and all other household members, including a parent, sibling, housemate, or tenant;
7. The telephone number and e-mail address of the applicant;
8. The mailing address of the applicant and the physical address of the applicant's home;
9. A statement that the applicant resides in Arizona;
10. The document specified under A.R.S. § 41-1080(A) and, as applicable (E), to demonstrate that the applicant is lawfully present in the United States;
11. The name of the school district in which the applicant's home is located;
12. Each address held by each adult household member during the previous 10 years;
13. The name, date of birth, current address, and telephone number of each child of the applicant who lives outside the applicant's home, if known, and a statement as to whether the child is reasonably expected to have contact with a child in foster placement;
14. The applicant's employment history, including the names of employers, dates of employment, and positions held during the previous 10 years;
15. A summary of the applicant's education;
16. A description of the applicant's experience in caring for children or adults;
17. The applicant's household budget, showing income, resources, assets, debts, and obligations;
18. Plans for the sleeping arrangements for each household member and for each potential foster child;
19. Plans for transportation of each potential foster child including:
    a. Evidence of a valid driver license for each household member who will provide transportation;
    b. Evidence that each vehicle to be used for transportation is registered and insured to operate in Arizona; and
    c. Evidence that the applicant has or shall obtain prior to placement, the correct number and type of child car seats for the conditions of the license.
20. A description of any pool on the foster home premises;
21. A description of the applicant's prior efforts to be certified or licensed for adoption, foster care, assisted living, child-care, and any other service for children or vulnerable adults, including:
    a. Applications that were withdrawn or denied; and
    b. Applications that resulted in a license or certification that was suspended or revoked.
22. A list of the names, mailing and e-mail addresses, and telephone numbers of five references, to attest that the applicant is of good character and has the qualifications to care for a foster child:
    a. At least one of the references, but not more than two, shall be related to the applicant;
    b. At least three of the references shall be unrelated to the applicant;
    c. If the applicant is married, then at least two of the references shall be familiar with the applicant as a couple; and
    d. If another adult household member is applying for a license or is currently licensed, then at least two of the references shall be familiar with both the applicant or foster parent and other household member.
23. A disclosure of civil and court proceedings in which the applicant has been a party, including:
    a. Criminal proceedings;

b. Lawsuits;
c. Dependency actions, including:
i. Removal of a dependent,
ii. Voluntary relinquishment,
iii. Suspension of custody, or
iv. Termination of parental rights;
d. Charges of child abuse or neglect;
e. Child support enforcement proceedings within the last five years;
f. Bankruptcy within the last five years;
g. Divorce, separation, or any other civil proceedings; and
h. Adoption;

24. A criminal record self-disclosure completed by each adult household member;
25. Evidence that each adult household member, has obtained a Level One fingerprint clearance card;
26. A disclosure by the applicant of any allegation against the applicant of abuse or neglect of any child or vulnerable adult;
27. Any history of abuse or neglect involving the applicant;
28. Authorization for a Central Registry record check:
a. For each adult household member, and
b. With each state in which any adult household member resided in during the previous five years.
29. A health self-disclosure completed by each adult household member;
30. A physician's statement as defined in R21-6-101(54), related to the physical and behavioral health completed for the applicant and for each adult household member who will be providing care and supervision;
31. An up-to-date immunization record, if available, for each child household member. The lack of available immunization records shall not prohibit licensure, but may be grounds for restricting the license to prevent the placement of infants, young children, and medically complex individuals; and
32. A Statement of Understanding signed by the applicant and attesting to the truth of the information provided during the application process.

C. The applicant in cooperation with a licensing agency shall submit the information required under R21-6-205 and this Section and the home study and assessment as directed under R21-6-206 and R21-6-405.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-404. Types of Licenses

A. OLR grants the following types of licenses:
1. An initial license,
2. A renewal license, and
3. An amended license to reflect changes made to information on the initial or renewal license.

B. The license for a foster parent shall specify the following:
1. The type of license (initial, renewal, or amended);
2. The name of the foster parent;
3. The physical address of the home;
4. The date the license is issued;
5. The maximum number of foster children that may be placed in the home;
6. The age range of foster children that may be placed in the home;
7. The gender of foster children that may be placed in the home;
8. Specialized services the foster parent is certified to provide, as applicable, under Article 3 of this Chapter include the following:
a. Receiving Foster Care,
b. Medically Complex Foster Care,
c. Therapeutic Foster Care, and
d. Group Foster Care.
9. All restrictions applicable to the license, including restriction to:
a. A specific foster child.
i. OLR shall not identify the name of a foster child on the license.
ii. OLR shall only specify the name of a foster child in confidential correspondence.
b. Respite care only.
c. Prevent the placement of infants, young children, and medically complex individuals, to protect their health due to a lack of a household member's immunization; and
10. The name of the licensing agency.

C. A license shall be valid for the period of time specified on the license and shall expire on the specified date unless the foster parent licensee files an application for renewal before the expiration date. In addition, a license shall terminate if:
1. The foster parent voluntarily closes the license, under R21-6-414(I);
2. OLR revokes the license as described under R21-6-414;
3. The foster parent moves to a different residence without first notifying the licensing agency or OLR; or
4. The foster parent moves out of Arizona.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-405. Home Study and Assessment

A. The applicant and adult household members shall complete self-assessments, using the forms approved by OLR, and share the results of the self-assessments with the licensing agency. The licensing agency shall, in the home study, summarize and consider information provided in the self-assessments.

B. All household members, including each child household member, if appropriate to the child's age and developmental level, shall participate in interviews conducted by the licensing agency, as directed by R21-6-206.

C. The applicant shall participate in and successfully complete pre-service training as specified in R21-6-303.

D. The applicant shall provide additional information as needed for the licensing agency to evaluate the fitness of the applicant and to conduct the home study.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-406. The Licensing Decision

A. OLR shall evaluate the applicant's compliance with licensing requirements before making a licensing decision.

B. Prior to making a licensing decision, OLR may, as necessary and appropriate:
1. Require the applicant or licensing agency to provide additional documentation to verify compliance with licensing requirements, such as marriage licenses, divorce decrees, legal separation agreements, child support orders or payments, pay stubs, and bankruptcy documents;
2. Require the applicant or licensing agency to provide additional information if:

a. The medical, physical, or mental health needs of a household member could interfere with the care and supervision of a foster child;
b. Adults residing outside the household will have frequent or close contact with a foster child; or
c. A household member has been charged with or convicted of a crime, even if the specific crime does not preclude the issuance of a Level One fingerprint clearance card;

3. Gather additional information needed to determine the applicant's fitness. This may include:
a. Interviewing the applicant,
b. Contacting references,
c. Verifying information provided in the application or by the licensing agency, and
d. Inspecting the applicant's home.

C. When making a licensing decision, OLR shall consider factors that have a bearing on the applicant's or foster parent's fitness. These factors include:
1. The applicant's current and historical compliance with licensing requirements. In assessing complaints and violations with statutes and licensing requirements, OLR shall consider:
a. The type of complaint or violation,
b. The severity of each violation,
c. The number of complaints or violations,
d. A pattern of complaints or violations, and
e. The applicant or foster parent's response to a corrective action plan.
2. The applicant's history of parenting or caring for children or vulnerable adults;
3. Allegations of abuse or neglect of a child or vulnerable adult made to DCS or the DES adult protective services against any of the following individuals residing in the home: the applicant, a household member, a foster child, an adult with a Developmental Disability, or a young adult residing in the foster home under a written individual case plan agreement for out-of-home care. To determine whether the allegation of abuse or neglect affects the applicant's fitness, OLR shall consider all relevant factors, including:
a. Whether the allegation was substantiated,
b. The number and nature of all allegations,
c. The length of time that has elapsed since each allegation,
d. The circumstances surrounding each allegation,
e. The extent of the person's rehabilitation, and
f. The nature and extent of each household member's involvement in the allegation.
4. The stability of residency in Arizona;
5. The stability of marital and household relationships;
6. The applicant's or foster parent's financial stability and ability to meet obligations;
7. Medical, physical, or mental health concerns that impact the applicant's or foster parent's ability to provide safe care and supervision to a child. OLR shall consider accommodations presented by the applicant, as permitted under R21-6-301 to reduce or eliminate any medical, physical, or mental health conditions;
8. Significant life disturbances, including the death of a family member, divorce, bankruptcy, and job separation;
9. Patterns of criminal charges or allegations; and
10. Other significant factors in the applicant's life.

D. OLR may waive non-safety licensing requirements on a case-by-case basis for an applicant who will only provide kinship care.

E. The licensing decision shall occur within the time-frames specified under R21-6-407.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-407. Licensing Time-frames

A. OLR shall review an application and render a licensing decision within required time-frames.

B. Within 30 days of receiving an application, OLR shall conduct an administrative completeness review to determine whether all required documentation and information has been submitted. Within the 30-day administrative review time-frame:
1. If the application is complete, OLR shall immediately move the application forward for a substantive review; or
2. If the application is incomplete, OLR shall issue a Notice of Incomplete Application to the applicant and the licensing agency containing a list of items and information needed to complete the application.
a. The applicant shall have 30 days to supply the missing items or information to OLR via the licensing agency.
b. The time-frame for the administrative completeness review shall be suspended from the date OLR issues the Notice of Incomplete Application to the date that OLR receives the missing item or information.
c. If the applicant does not supply the requested items or information within 30 days of receiving the Notice of Incomplete Application, OLR may close the file. Once closed, the applicant may reapply for licensure, except as prohibited by R21-6-414.
d. If the applicant supplies the required items and information via the licensing agency to OLR within 30 days, OLR shall conduct a substantive review of the application.

C. Within the 30 days following the administrative completeness review of an application, and if the application is complete, OLR shall complete a substantive review to evaluate the applicant's fitness for licensure. Within the 30- day substantive review time-frame, OLR:
1. May request that the applicant or licensing agency provide additional information if needed to evaluate the suitability of the applicant for licensure.
a. The applicant and the licensing agency shall have an additional 21 days to provide the information to OLR.
b. The time-frame for the substantive review shall be suspended from the date OLR requests additional information to the date OLR receives the information.
2. Shall make the licensing decision, as described under R21-6-406, and take a licensing action, as described under R21-6-414.

D. Within an overall time-frame of 60 days upon receipt of a complete application, OLR shall:
1. Complete an administrative review of an application,
2. Complete a substantive review of an applicant's fitness, and
3. Notify the applicant and the licensing agency of the decision to grant or deny a license.

E. The same time-frames used for initial licensure shall also apply to renewing and amending a license:
1. OLR shall complete the administrative completeness review within a maximum of 30 days from receipt of the application.

2. OLR shall complete the substantive review of a complete application within a maximum of 30 days following the administrative completeness review.
3. OLR shall review the application and notify the applicant and licensing agency of the licensing decision within a maximum of 60 days, not including suspended time-frames, from receipt of the application.

Process	Responsible Party	Time-frame for Completion
Completion of training and assembly of the application	Applicant and licensing agency	Not regulated: typically two–four months
Administrative completeness review	OLR	Maximum of 30 days
Respond to the notification of incompleteness	Applicant and licensing agency	Maximum of 30 days (time-frame is suspended)
Substantive review	OLR	Maximum of 30 days
Respond to request for additional information to evaluate fitness	Applicant and licensing agency	Maximum of 21 days (time-frame is suspended)
Overall time-frame for a licensing decision	OLR	Maximum of 60 days

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-408. Licensing Limitations

A. OLR may license unmarried applicants who reside together individually and shall link the unmarried applicants in the Department's electronic database.

B. OLR shall license married applicants jointly, unless a married applicant applies to be licensed individually because:
1. The applicant's spouse is permanently, physically disabled to such an extent that the spouse is unable to provide care for a child, as verified by a physician's statement;
2. The applicant's spouse is absent from the household and expected to be absent from the household for nine or more of the following 12 months due to military service; or
3. The applicant and his or her spouse have been separated for at least one year, and the spouses have not lived together. If the spouses have not lived together for:
   a. Five or more years the applicant shall:
      i. Sign a statement that the marriage is over and the applicant has no intent to live or reconcile with their spouse;
      ii. If the applicant knows the location of the spouse, obtain a statement from the spouse that the marriage is over, and the spouse has no intent to live or reconcile with the applicant;
      iii. Submit evidence that the spouse is living elsewhere, if available; and
      iv. Submit any other evidence that the spouse is not going to return to the household; or
   b. One to five years, the applicant's spouse shall:
      i. Obtain a Level One fingerprint clearance card, and
      ii. Pass a protective services registries check.

C. If OLR licenses a married applicant individually under subsections (B)(2) or (3) and the applicant's spouse returns, the applicant shall:
1. Notify OLR immediately under R21-6-411; and
2. Submit a new application as a married couple under R21-6-403 and meet all licensing requirements.

D. A license is only valid for the licensee specified on the license.

E. A license is only valid for the address specified on the license.

F. A foster parent shall not simultaneously hold more than one license or a license and certification to provide human care services in the foster home, including foster care, child care, assisted living, or an adult developmental home without the written approval of OLR. This restriction does not apply to the certification of a licensed foster home to provide specialized services under the classification of licenses described under R21-6-331.

G. An applicant shall not be an employee or relative of an employee for the licensing agency that is assisting the applicant with licensure.

H. OLR's issuance of a license to a qualified applicant does not guarantee the placement of a child.

I. A foster parent is limited to the capacity, age, gender, and other conditions or restrictions specified on the license when providing care, including respite care.

J. The foster parent shall notify and obtain approval from DCS and the licensing agency before receiving a child from a Child Placing Agency, other than DCS.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-409. Training Reporting Update

A. The foster parent shall cooperate with the licensing agency to provide proof of completion of the training required by A.R.S. § 8-509.

B. OLR may take an adverse licensing action against the foster parent if he or she fails to complete the required training and to submit the information in subsection (A) as required by A.R.S. § 8-509.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-410. Amending the License

A. The foster parent shall notify the licensing agency if there are any circumstances requiring an amendment to the license.

B. The foster parent shall work with the licensing agency to request an amendment to modify the following information on the license:
1. License type;
2. Increase or decrease in capacity, age range, and gender of the foster children who may be placed in the home;
3. Physical address of the home;
4. Remodel of the home;
5. Legal name of the foster parent;
6. Change in marital status;
7. Addition of a household member; including the birth of an adopted child;

8. Name of a spouse, due to the death of a spouse or due to a change in marital status;
9. Death of a licensed foster parent;
10 Name of the licensing agency specified on the license;
11. Modification of the license expiration date; or
12. Any condition or certification specified on the license.

C. The foster parent shall work with the licensing agency to request an amendment to the license via the Department's electronic database. The following information shall be included in the request to amend a license:
1. A description of the change or changes being requested;
2. Justification for the change or changes, as appropriate;
3. Other relevant information to assist in the issuance of a license amendment;
4. Results of a new Life Safety Inspection, if required;
5. A recommendation by the licensing agency to issue or deny an amended license; and
6. A recommendation by the licensing agency to limit the terms or conditions of a license, if applicable.

D. To request an amendment to the license to change the physical address due to the relocation of the foster parent, the foster parent shall:
1. Provide new contact information including:
   a. Phone number,
   b. Address, and
   c. E-mail;
2. Provide evidence that the change in residence does not negatively impact their ability to meet financial obligations;
3. Provide plans for the sleeping arrangements for each household member and foster child; and
4. Ensure that the home meets the standards for a Life Safety Inspection, in accordance with Chapter 8 of this Title.

E. To request an amendment to the license to add the name of a spouse due to marriage, the foster parent and spouse shall jointly:
1. Complete an application for licensure;
2. Submit proof of legal marriage;
3. Participate in the home study and assessment; and
4. Cooperate with the licensing agency's evaluation of the spouse's fitness as defined in R21-6-101(20).

F. OLR may initiate the action to amend a license to protect the health, safety, or well-being of a foster child.

G. An amendment shall not change the expiration or issuance dates on a license, unless the amendment is approved to modify the license expiration date.

H. Information provided for a renewal does not replace the process required to amend the license.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-411. Addition of Household Members

If there is a change in household members during the term of the license, the foster parent shall:
1. Notify the licensing agency of the change to the household in accordance with R21-6-327 and R21-6-411;
2. Ensure that each new household member complies with the applicable requirements of this Chapter; and
3. Notify the licensing agency and obtain OLR and Child Placing Agency approval of proposed changes in the sleeping arrangements for each household member and for each foster child.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-412. Application for a Renewal License

A. A license shall:
1. Be valid for the period of time specified on the license, and
2. Expire at midnight of the expiration date if the applicant does not apply for a renewal license in accordance with this Article.

B. To initiate the renewal of the license, the foster parent shall confirm:
1. With the licensing agency that he or she wishes to renew the license, and
2. The accuracy of or update the information via the Department's electronic database.

C. The foster parent shall cooperate with the licensing agency by:
1. Participating in and facilitating interviews necessary for the licensing agency to update the home study;
2. Assembling the documents needed to demonstrate ongoing compliance with licensing requirements;
3. Completing training, as described in R21-6-303 and R21-6-331 if applicable.
4. Cooperating with the completion of a Life Safety Inspection of the home as described under R21-6-304:
   a. By the licensing agency every year, and
   b. By OLR at least once every two years.
5. Providing a current health self-disclosure for each adult household member every year;
6. Obtaining a physician's statement for the foster parent at least once every two years and providing a physician's statement for other adult household members if determined to be necessary by OLR in accordance with R21-6-302;
7. Maintaining a current and valid fingerprint clearance card meeting Level One requirements for each adult household member; and
8. Signing the Statement of Understanding.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-413. Application for License Reinstatement

A. OLR shall evaluate an applicant for reinstatement the same as an applicant for a renewal license under R21-6-412.

B. Reinstatement is available to applicants previously licensed by OLR, including those foster parents whose license is on inactive status because the foster home has been licensed by DES as a child developmental foster home if:
1. The previous application for licensure was submitted via the Department's electronic database;
2. The previous license has been expired for less than one year, or if a child developmental home, there has been a gap in licensure between the foster home license and the child developmental foster home license of less than one year: and
3. OLR completes a new Life Safety Inspection.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-414. Licensing Actions

A. Within the time-frame specified in R21-6-407, OLR shall notify the applicant and the licensing agency of the licensing decision.

B. OLR shall issue a license if OLR determines that an applicant or foster parent is in:
1. Full compliance with all licensing requirements;

2. Substantial compliance with licensing requirements and an approved corrective action plan is in place for violations, as specified under R21-6-416; or
3. Substantial compliance based on information currently available if an investigation is pending.

C. OLR may deny, suspend, or revoke a license if an applicant or foster parent:
1. Refuses or fails to provide the licensing agency or OLR with information needed to evaluate compliance with licensing requirements;
2. Misrepresents or falsifies information needed by the licensing agency or OLR to evaluate compliance with licensing requirements;
3. Misrepresents or falsifies information presented by a household member during the licensing process;
4. Is aware of a misrepresentation or falsification of the information presented by the household member during the licensing process;
5. Refuses or fails to substantially comply with licensing requirements, Arizona or federal laws, or local codes or ordinances;
6. Refuses or fails to carry out a required corrective action plan to correct a violation;
7. Has been denied a certificate or license to provide care to a foster child or vulnerable adult, unless the denial was based on failure to complete the process according to a required time-frame;
8. Has had a certificate or license to provide care to a foster child or vulnerable adult denied, suspended, or revoked;
9. Has a household member that refuses to cooperate with the licensing process;
10. Lives in a home in which a fingerprint clearance card meeting Level One requirements for a foster parent and an adult household member has been suspended, denied, or revoked;
11. Lives in a home in which an allegation of child abuse or neglect has been substantiated against a household member; or
12. The foster parent moves to a different residence without first notifying the licensing agency.

D. OLR may initiate an adverse licensing action if OLR concludes that:
1. A violation of licensing requirements is not correctable;
2. A violation of licensing requirements poses a risk to the health, safety, or well-being of a child;
3. A foster parent has a history or pattern of similar violations with licensing requirements; or
4. A violation is ongoing and continuing.

E. If OLR takes an adverse licensing action, OLR shall send a dated notice of the action to:
1. The applicant or foster parent by certified mail,
2. The licensing agency, and
3. The Child Placing Agency for each child placed with the foster parent or applicant at the time of the action.

F. The notification for an adverse licensing action shall specify:
1. The effective date of the adverse action;
2. The facts upon which the adverse action is based;
3. The law or rule violation that is the basis of the adverse action; and
4. The time-frame and process for the applicant or foster parent to appeal the adverse action, including:
   a. The form approved by DCS to appeal the adverse action, and
   b. The procedure for the applicant or foster parent to request an appeal of the adverse action.

G. In the event of an adverse licensing action, and until there is final resolution of the matter:
1. The foster parent shall not:
   a. Receive new placements;
   b. Accept additional foster children;
   c. Provide short-term care as described under R21-6-306 or respite care;
2. A Child Placing Agency shall not place additional foster children with the foster parents; and
3. The Child Placing Agency may remove a current foster child from the home if, in the judgment of the Child Placing Agency, there is reasonable belief of a risk to the health, safety, or well-being of the child.

H. In the event of a license revocation, the adverse action shall be effective:
1. On the 26th day after the foster parent's receipt of the revocation notice; or
2. On the date that an administrative hearing officer or appeals board issues a written decision affirming the revocation, if the foster parent appeals the revocation.

I. An applicant or foster parent may voluntarily withdraw the application for licensure or close the license at any time by submitting written notice to the licensing agency and OLR, using the form approved by OLR.
1. If the foster parent voluntarily withdraws an application or closes a license while in good standing, the applicant or foster parent may re-apply for a license.
2. A license is not in good standing, and the licensing authority shall deny a re-application, if the foster parent withdrew or closed a license:
   a. Before the completion of a corrective action, or with the knowledge that a corrective action plan was pending if the closure was to avoid compliance with the corrective action plan;
   b. Before the completion of an investigation or inquiry; or
   c. When a DCS investigation of child abuse or neglect is pending.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-415. Routine Monitoring and Verification of Ongoing Compliance

A. Throughout the term of a license, the foster parent shall ensure ongoing compliance with licensing requirements.

B. The foster parent shall cooperate with monitoring requirements by making the home available for inspections and by participating in interviews. Inspection and monitoring activities by the licensing agency or OLR may include, as necessary and appropriate:
1. A review of records and reports maintained by the foster parent on the care, services, and treatment provided;
2. Interviews with the foster parent and household members including children in the home age five years and older;
3. Interviews with foster children; and
4. An inspection of the home, foster home, and vehicles used to transport foster children.

C. At the time of each monitoring or inspection, the licensing agency shall provide the applicant or foster parent with:
1. A written summary of the monitoring or inspection activities conducted;
2. Planned follow-up and required corrective actions, as applicable; and
3. A written summary of the applicant's or foster parent's rights, in accordance with A.R.S. § 41-1009.

D. The licensing agency shall keep a copy of the written summaries specified in subsection (C) and make the summaries available to OLR upon request.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-416. Corrective Action Plan

A. OLR may initiate and place a foster parent on a corrective action plan to remedy the violation of a licensing requirement. A foster parent shall comply with the corrective action plan.

B. In determining whether to require corrective action, OLR shall consider the following criteria:
1. The nature of the violation;
2. Whether the violation can be corrected;
3. Whether the foster parent understands the violation and shows a willingness and ability to participate in corrective action;
4. The length of time required to implement corrective action;
5. Whether the same or similar violations have occurred on prior occasions;
6. Whether the foster parent has had prior corrective action plans, and, if so, the foster parent's success in achieving the goals of the plan;
7. The foster parent's history as a foster parent or care giver; and
8. Other similar or comparable factors demonstrating the foster parent's ability and willingness to follow through with a corrective action plan and avoid future violations.

C. The corrective action plan shall:
1. Be written by OLR and may be in cooperation with the licensing agency,
2. Specify the facts that constitute the violation,
3. Specify the law or rule violated by the foster parent,
4. Specify the steps a foster parent must take to remedy the violation, and
5. Specify a date for completion of the required corrective action.

D. The licensing agency or OLR may, as necessary and appropriate, conduct an unannounced monitoring visit to verify the implementation or completion of a corrective action.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-417. The Appeal Process

A. An applicant or foster parent shall have the right to appeal an adverse licensing action following the process specified under 21 A.A.C. Chapter 1, Article 3.

B. To appeal, per A.R.S. § 8-506, an applicant or foster parent shall submit a written notice of appeal to OLR within 25 days from the mailing date on the adverse licensing action notice.

C. The notice of appeal shall specify the action being appealed, and a statement of why the adverse licensing action is wrong.

D. If a child has been removed from the home because of a health, welfare, or safety issue, the child shall remain out of the home while the appeal is pending.

E. The following are not appealable:
1. Restrictions or limits specified by OLR on the license, including the capacity, age group, or gender of children that may be placed in the home;
2. The assignment of a required corrective action, as specified under R21-6-416, to bring the applicant or foster parent into compliance with licensing requirements.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-418. Allegations of Abuse or Neglect; Licensing Complaints

A. The applicant or foster parent shall immediately report allegations of abuse or neglect of a child, or a licensing complaint to the Department's Centralized Intake Hotline and to the licensing agency.

B. The applicant or foster parent shall cooperate with:
1. An investigation conducted by DCS, and
2. A licensing investigation conducted by a licensing agency or OLR.

C. The Child Placing Agency shall not place additional children in the foster home throughout the DCS or licensing investigation until the matter is resolved.

D. OLR shall determine the action, if any, that it will take against the foster parent.
1. OLR shall implement an adverse licensing action as described under R21-6-414 if the DCS or licensing investigation:
   a. Substantiates an allegation of abuse or neglect; or
   b. Confirms the violation of a licensing requirement and there is reasonable cause to believe the violation:
      i. Is continuing;
      ii. May recur; or
      iii. Poses a risk to the health, safety, or well-being of a child.
2. If the licensing investigation validates that there was a violation of a licensing requirement but that the foster parent has corrected the violation, OLR:
   a. Shall record the incident and resolution in the licensing record,
   b. May specify additional required corrective action, and
   c. Shall notify the licensing and Child Placing Agency of the violation and corrective action.

E. A complainant's identity is confidential unless OLR takes a licensing action based on the testimony of the complainant.

Historical Note
New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

R21-6-419. Waiver of Non-Safety Licensing Requirements for Kinship Care

A. OLR may waive specific non-safety rule requirements for an applicant or foster parent providing only kinship care, as defined under R21-6-101(36), on a case by case basis, if the applicant or foster parent demonstrates that compliance would be a hardship. The applicant or foster parent may work with his or her licensing agency to comply with this Section.

B. The request for a waiver shall include:
1. The specific rule to be considered for waiver by OLR;
2. The reason compliance would be a hardship;
3. Any proposed alternative compliance with the rule requirement, including pictures or diagrams that depict any physical requirement to be waived; and
4. Justification that waiving the licensing requirement will not compromise the safety of a foster child.

C. The applicant or foster parent or licensing agency shall submit a waiver request only on forms supplied by OLR.

D. OLR shall consider the waiver of a non-safety licensing requirement on a case-by-case basis.

E. An applicant or foster parent shall base a waiver request on a licensing requirement and the needs of the foster child. OLR

shall not grant a waiver request because it would be inconvenient for the foster parent or applicant to comply with a licensing requirement.

F. Non-safety issues may include granting licensure to applicants who are 18 to 20 years of age, have fewer than two full bathrooms, or may not meet the financial requirements of R21-6-301.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3479, effective January 24, 2016 (Supp. 15-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.

2. Provide transparency by being open and accountable to the public for the actions of the department.

3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.

4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.

5. Adopt rules to implement the purposes of the department and the duties and powers of the director.

6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in the custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.

7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. 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.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, 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 and other related federal acts and titles.

D. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

E. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

F. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or 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.

8-502. Foster parent and child welfare agency information; confidentiality; permissible disclosure; use; violation; classification; definitions

A. Unless otherwise provided by law and except as provided in subsection E, F or G of this section, all personal information concerning a foster parent applicant or licensee or an individual who applies for or receives a child welfare agency license is confidential and may not be released, unless the release is ordered by the superior court or provided for by court rule. DCS information is confidential and may be released only as prescribed in section 8-807.

B. Foster parent information is confidential, except the department may release the information prescribed in subsection C of this section if the foster parent's license has been revoked or all of the following apply:

1. No foster children are residing in the home.

2. The department has begun a licensing denial, suspension or revocation action.

3. The foster parent's identity has been made public by sources outside the department.

C. If requested, the department may release the following foster care parent information if permissible under subsection B of this section:

1. The name of the licensee.

2. The dates of current and past licensure.

3. Any training in which the licensee participated.

4. The number, ages and gender of children for which the foster care provider is licensed.

5. Any complaints that do not involve a child safety or an office of child welfare investigations investigation.

6. Any restrictions on the license of the licensee.

D. Child welfare agency information is not confidential, except for both of the following:

1. Any DCS information in the licensing files of the department.

2. The address of any facility where a foster child is placed, even if the address is also the corporate address of the child welfare agency.

E. An employee of the department of child safety, the department of law or a court may obtain the information described in subsection A, B, C or D of this section in the performance of the employee's duties.

F. An employee of the department of child safety, the department of law or a court may release information that is otherwise confidential under this section under any of the following circumstances:

1. To an applicant or licensee if a request is made in writing specifically requesting information that directly relates to the person who requests the information.

2. In oral or written communications involving the provision of services or the referral to services between employees of, persons under contract with or persons holding a general employment relationship with the department of child safety, the department of law or the juvenile court.

3. If the disclosure is necessary to protect against a clear and substantial risk of imminent serious injury to a client of the department of child safety.

4. To an agency of the federal government, this state or another state or any political subdivision of this state for official purposes. Information received by a governmental agency pursuant to this paragraph shall be maintained as confidential unless the information is pertinent to a criminal prosecution.

5. To a foster parent or a parent certified to adopt if the information is necessary to assist in the placement with or care of a child by the foster parent or person certified to adopt.

6. To an officer of the superior court, the department or an agency that is required to perform an investigation pursuant to section 8-105, if the information is pertinent to the investigation. Information received pursuant to this paragraph may be disclosed to the court, but shall otherwise be maintained as confidential.

G. Notwithstanding sections 8-519, 8-541 and 8-542, a standing committee of the legislature or a committee appointed by the president of the senate or the speaker of the house of representatives may obtain information described in subsection A, B, C or D of this section on written request to the director. Information obtained pursuant to this subsection may be used only to conduct investigations related to legislative oversight of the department. Personally identifiable information may not be further disclosed.

H. A person who violates this section is guilty of a class 2 misdemeanor.

I. For the purposes of this section:

1. "Child welfare agency information" means all information in the licensing file of the department, including all information on corporate or other entity applicants or licensees and any licensing investigations. Child welfare agency information does not include personal information about individuals who apply for licensure to or are licensed by the department as a child welfare agency.

2. "DCS information" has the same meaning prescribed in section 8-807.

3. "Foster parent information" means all information in the licensing file of the department that is not confidential under any other law. Foster parent information does not include personal information, information that is confidential under another statute or information of a similar nature.

4. "Personal information" means information about an individual that is disclosed by the individual or by a third party on behalf of the individual to obtain or maintain a license. Personal information includes all of the following:

(a) The individual's identity, social security number, address and personal history.

(b) Financial, health or medical information about the individual.

(c) References for the individual.

8-503. Powers and duties

A. The division shall:

1. Exercise supervision over all child welfare agencies.

2. Advise and cooperate with the governing boards of all child welfare agencies.

3. Assist the staffs of all child welfare agencies by giving advice on progressive methods and procedures of child care and improvement of services.

4. Establish rules, regulations and standards for:

(a) Licensing of child welfare agencies.

(b) Licensing of foster homes.

(c) Classifications of foster homes as:

(i) Receiving foster homes.

(ii) Regular foster homes.

(iii) Special classes of foster homes as are needed according to the types of problems involved.

(iv) Group foster homes.

(d) Certifying each foster home according to one or more of the categories prescribed in subdivision (c) of this paragraph.

(e) Initial and ongoing foster parent training programs.

(f) The method of approving foster parent training programs.

(g) Uniform amounts of payment for all foster homes according to certification. However, variations in uniform amounts of payments may be allowed for foster homes based on consideration of geographical location or age or mental or physical condition of a foster child.

(h) Renewal of licenses of child welfare agencies and foster homes.

(i) Form and content of investigations, reports and studies concerning disposition of children and foster home placement.

5. Establish a program of counseling and rehabilitation of parents whose children have been placed in foster homes.

6. Establish foster parent training programs or contract with other agencies, institutions or groups for the provision of training programs to foster parents. Foster parent training programs shall be established in at least the following areas:

(a) Initial and ongoing training as a foster parent for a regular or group foster home.

(b) Initial and ongoing training as a foster parent for a special foster home.

7. Regulate the importation and exportation of children.

8. In conjunction with the department of education and the department of juvenile corrections, develop and implement a uniform budget format to be submitted by licensed child welfare agencies. The budget format shall be developed in such a manner that, at a minimum, residential and educational instructional costs are separate and distinct budgetary items.

9. Establish as a goal that, at any given time, not more than fifty percent of the total number of children whose maintenance is subsidized by title IV, part E of the social security act, as amended, shall be in foster care in excess of twenty-four consecutive months. The division shall establish through regulations appropriate procedures to achieve the goal.

10. Maintain a goal that infants who are taken into custody by the department be placed in a prospective permanent placement within one year after the filing of a dependency petition.

B. Except as provided in section 8-514.01, large group settings for children, group homes for children and child developmental homes that have one or more residents who are clients of the department with developmental disabilities shall be licensed pursuant to title 36, chapter 5.1, article 3. Rules, regulations and standards adopted pursuant to subsection A, paragraph 4 of this section shall not apply to group homes for children or child developmental homes licensed pursuant to title 36, chapter 5.1, article 3.

8-506. Denial, suspension or revocation of license; foster home; hearing; exception

A. The division may deny the application or suspend or revoke the license of any foster home for wilful violation of any provision of this article or failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation shall be given to the applicant or holder of the license. A copy of the written notice of the suspension or the proposed denial or revocation shall be forwarded to the agency that recommended the foster home for licensing. Within twenty-five days after the mailing date of the written notice of proposed denial, revocation or suspension, the applicant or holder may request a hearing in accordance with the rules of the division. If the hearing is requested it shall be held within ten days after the request, at which time the applicant or holder shall have the right to present testimony and confront witnesses.

B. A denial, suspension or revocation of a foster home license due to a failure to obtain or maintain a level I fingerprint clearance card as required by section 8-509 is not an appealable agency action.

8-507. Operation without license

A. When the division has reason to believe that an agency or foster home is being conducted or maintained without a license, it shall make an investigation, and, if necessary, the division shall take action to prevent such continued operation.

B. If an agency provides treatment or permits restrictive behavior techniques to be used, the agency shall obtain a license issued by the department of health services pursuant to title 36, chapter 4 or a child welfare agency license issued pursuant to this article.

C. The superior court shall have jurisdiction to issue an injunction restraining the operation of a child welfare agency or foster home without a license.

8-509. Licensing of foster homes; fingerprint waiver; restricted license; renewal of license; provisional license; exemption from licensure; immunization requirements

A. The department shall license and certify foster homes. Licenses are valid for a period of two years.

B. The department shall not issue a license without satisfactory proof that the foster parent or parents have completed six actual hours of approved initial foster parent training as set forth in section 8-503 and that each foster parent and each other adult member of the household has a valid fingerprint clearance card issued pursuant to section 41-1758.07. The foster parent and each other adult member of the household must certify on forms that are provided by the department and that are notarized whether the foster parent or other adult member of the household is awaiting trial on or has ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.

C. A kinship foster care parent shall apply for a fingerprint clearance card pursuant to section 41-1758.07. In its discretion and for good cause, the department may waive the requirement for a kinship foster care parent to obtain a fingerprint clearance card. In evaluating whether good cause exists, the department shall apply the criteria prescribed in section 41-1758.07, subsections B and C. If the department waives the requirement, the department shall issue to the kinship foster care parent a restricted license that applies only to the children placed with the kinship foster care parent for kinship foster care.

D. The department shall not renew a license without satisfactory proof that the foster parent or parents have completed twelve actual hours of approved ongoing foster parent training during the two-year period of licensure as set forth in section 8-503.

E. If the department determines that completing the training required in subsections B and D of this section would be a hardship to the foster parent or parents, the department may issue a provisional license for a period not to exceed six months. A provisional license may not be renewed.

F. Child welfare agencies that submit foster homes for licensing shall conduct an investigation of the foster home pursuant to licensing rules of the department. The department shall conduct investigations of all other foster homes. If the foster home meets all requirements set by the department, the agency shall submit an application stating the foster home's qualifications to the department. The agency may also recommend the types of licensing and certification to be granted to the foster home.

G. The department shall accept an adoptive home certification study as a licensing home study if the study has been updated within the past three months to include the information necessary to determine whether the home meets foster care licensing standards.

H. This section does not apply if the child is placed in a home by a means other than by court order and if the home does not receive compensation from this state or any political subdivision of this state.

I. The department may not prohibit a person operating a licensed foster home from applying for or receiving compensation as a foster home parent due to employment with this state.

J. The department shall not require a foster parent to immunize the foster parent's natural or adoptive children as a condition of foster home licensure.

K. A licensee may modify the renewal date of a license issued pursuant to this section by submitting an application for modification of renewal date with the department on a form prescribed by the department. The licensee must specify the new month of renewal on the application. The modified renewal date must be before, but not more than six months earlier than, the existing renewal date.

L. The foster care review board shall review the cases of children placed by the department in foster homes licensed pursuant to this section as required by section 8-515.03.

8-511. Short-term caregiver

A. Except as prescribed in subsection B, if circumstances require a foster parent to leave a foster child in the care of another person, the foster parent shall:

1. Use reasonable judgment in the foster parent's choice of an adult to provide the care.

2. Notify the department case manager before the care exceeds twenty-four hours, in a nonemergency situation.

3. Notify the department case manager before the care exceeds seventy-two hours, in an emergency situation.

B. A foster parent who is certified to provide care to a child with developmental disabilities, a medically fragile child or a child receiving treatment foster care shall implement the alternate care plan that is approved by the department, if the foster parent must leave the foster child in the care of another person.

8-514. Placement in foster homes

A. Subject to the provisions of section 8-514.01, the division or a licensed child welfare agency if so authorized in its license may place a child in a licensed foster home for care or for adoption. Notwithstanding any law to the contrary, the division or a licensed child welfare agency may place a child in excess of the number of children allowed and identified in a foster parent's license if the division or agency reasonably believes the foster home has the ability to safely handle additional children, there are no outstanding concerns, deficiencies, reports or investigations known by the division regarding the foster home, and the child meets any of the following criteria:

1. The child is part of a sibling group that currently resides in the foster home.

2. The child is part of a sibling group that is being considered for placement in a foster home but because of the maximum child limit would otherwise have to be separated.

3. The child previously resided in the foster home.

4. The child is a kinship placement for the foster home.

B. The department shall place a child in the least restrictive type of placement available, consistent with the best interests of the child. The order for placement preference is as follows:

1. With a parent.

2. With a grandparent.

3. In kinship care with another member of the child's extended family, including a person who has a significant relationship with the child. A foster parent or kinship caregiver with whom a child under three years of age has resided for nine months or more is presumed to be a person who has a significant relationship with the child.

4. In licensed family foster care.

5. In therapeutic foster care.

6. In a group home.

7. In a residential treatment facility.

C. Notwithstanding subsection B of this section, the order for placement preference of a Native American child is as follows:

1. With a member of the child's extended family.

2. In a licensed family foster home approved or specified by the child's tribe.

3. In an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

4. In an institution approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs pursuant to 25 United States Code chapter 21.

D. At the time of placement there shall be presented to the foster parents, by the agency or division placing the child, a written summary of known, unprivileged information regarding the child, including the following:

1. Demographic information.

2. Type of custody and previous placement.

3. Pertinent family information including but not limited to the names of family members who, by court order, may not visit the child.

4. Known or available medical history including but not limited to:

(a) Allergies.

(b) Immunizations.

(c) Childhood diseases.

(d) Physical disabilities.

(e) Other idiosyncrasies.

(f) The child's last doctor, if known.

5. A summary of the child's history of adjudication on acts of delinquency, as may be public record and available in the file of the clerk of the superior court.

E. The responsibility of the agency or the division for a child placed in a foster home shall be defined in writing and accepted by the person receiving the child. The agency or division shall make available to the foster parents a method of acquiring emergency information that may be necessary to deal with situations that may arise pursuant to their responsibilities as foster parents.

F. Every foster home shall maintain a record of the children received, which shall include facts in regard to the children and their care and shall be in the form and kept in the manner prescribed by the division.

G. In addition to any other relevant factors, the department shall consider the following in determining whether a placement is in the best interests of the child:

1. The caregiver is interested in providing permanence for the child if reunification efforts ultimately fail.

2. The expressed wishes of the birth parent and child, if applicable, unless the wishes are contrary to law.

3. The relationship of the caregiver with the child and the child's family.

4. The proximity of the placement home to the parents' home and the child's current school or school district.

5. The strengths and parenting style of the caregiver in relation to the child's behavior and needs.

6. The caregiver's willingness to communicate and interact with the birth family to support visitation and the reunification process.

7. The caregiver's ability and willingness to accept placement of the child and all or any of the child's siblings.

8. If any sibling will be placed separately, the caregiver's ability and willingness to provide or assist in maintaining frequent visitation or other ongoing contact between the child and the child's sibling.

9. The child's fit with the family with regard to age, gender and sibling relationships.

10. If the child has chronic behavioral health needs:

(a) Whether the child's behavior will place other children in the home at risk.

(b) The caregiver's ability to provide the necessary level of supervision to prevent harm to the child or others by the child.

11. Whether placement in the home would comply with the placement preferences prescribed by 25 United States Code section 1915, if applicable.

H. Within thirty days after a dependent child who is at least eight years of age is placed in out-of-home care, unless otherwise recommended by a doctor or therapist, the department shall ensure that the child receives age-appropriate and developmentally appropriate materials and resources about sexual abuse, child sex trafficking and exploitation. The materials and resources must include a definition of sexual abuse, information about the dangers of online and in-person predators and methods for reporting abuse. The materials and resources may include a twenty-four-hour hotline telephone number.

8-529. Children in foster care and kinship foster care; rights

A. A child in foster care and kinship foster care has the following rights:

1. To appropriate care and treatment in the least restrictive setting available that can meet the child's needs according to the best judgment of the foster parent.

2. To live in a safe, healthy and comfortable placement where the child can receive reasonable protection from harm and appropriate privacy for personal needs and where the child is treated with respect.

3. To be placed with a relative when such placement is in the best interest of the child.

4. To be placed with or in close proximity to the child's siblings when possible and to visit and have contact with siblings and family members when it is in the best interest of the child.

5. To know why the child is in foster care and what will happen to the child and to the child's family, including siblings, and case plans.

6. Whenever possible, to be placed with a foster family that can accommodate the child's communication needs.

7. To be disciplined in a manner that is appropriate to the child's level of maturity and not be subjected to physical discipline methods.

8. To attend community, school, extracurricular and religious services and activities of the child's choice to the extent that it is appropriate for the child, as planned and discussed with the child's placement worker and caseworker and based on caregiver ability if transportation is available through a responsible party.

9. To go to school and receive an education that fits the child's age and individual needs. If remaining in the child's current school is not in the child's best interest, the child has the right to be enrolled in the least restrictive school available.

10. To training in personal care, hygiene and grooming.

11. To clothing that fits comfortably and is adequate to protect the child against natural elements such as rain, snow, wind, cold and sun.

12. To have personal possessions at home and to acquire additional possessions within reasonable limits, as planned and discussed with the child's foster parent, placement worker and caseworker, and based on caregiver ability.

13. To personal space, preferably in the child's foster home bedroom for storing clothing and belongings.

14. To healthy foods in healthy portions that are appropriate for the child's age.

15. To comply with any approved visitation plan, and to have any restrictions explained to the child in a manner and level of details deemed age appropriate by the foster parent in agreement with the caseworker and documented in the child's record.

16. If the child is six years of age or older, to receive contact information for the child's caseworker, attorney or advocate and to speak with them in private if necessary.

17. To be represented by an attorney in all proceedings initiated pursuant to this title.

18. To participate in age appropriate child's service planning and permanency planning meetings and to be given a copy or summary of each service plan and service plan review. The child may request someone to participate on the child's behalf or to support the child in this participation.

19. To attend the child's court hearing and speak to the judge.

20. To have the child's records and personal information kept private and discussed only when it is about the child's care except the foster parent shall have full access to the records to determine if the child will be successful in the home. During the foster placement, if the foster parent requests to view the record on experiencing problems with the child's adjustment, the full record shall be made available for viewing by the foster parent.

21. To receive medical, dental, vision and mental health services and to be informed about diagnoses and treatment options as is developmentally appropriate.

22. To be free of unnecessary or excessive medication.

23. To receive emotional, mental health or chemical dependency treatment separately from adults who are receiving services, as planned and discussed with the child's placement worker and caseworker, as is financially reasonable for the foster parent.

24. To report a violation of personal rights specified in this section without fear of punishment, interference, coercion or retaliation, except that an appropriate level of punishment may be applied if the child is proven to have maliciously or wrongfully accused the foster parent.

25. To be informed in writing of the name, address, telephone number and purpose of the Arizona protection and advocacy system for disability assistance.

26. To understand and have a copy of the rights listed in this section.

B. A child in foster care or kinship foster care who is at least fourteen years of age has the following rights:

1. To attend preparation for adult living classes and activities as appropriate to the child's case plan, as is financially reasonable for the foster parent.

2. To a transition plan that includes career planning and assistance with enrolling in an educational or vocational job training program.

3. To be informed of educational opportunities, including information regarding assistance and funding for postsecondary and vocational education.

4. To assistance in obtaining an independent residency when the child is too old to remain in foster care from the child's caseworker, attorney or advocate.

5. To request a court hearing for a court to determine if the child has the capacity to consent to medical care that is directly related to an illness, disease, deformity or other physical malady.

6. To receive help with obtaining a driver license, social security number, birth certificate or state identification card and credit reports with assistance in interpreting the reports and resolving inaccuracies in the report. The foster parent shall have discretion to determine if the child is responsible and mature enough to become a licensed driver.

7. To receive necessary personal information within thirty days after leaving foster care, including the child's birth certificate, immunization records and information contained in the child's education portfolio and health passport.

8. To participate in or reenter extended foster care when the child is at least eighteen and under twenty-one years of age pursuant to section 8-521.02.

C. The department shall provide information regarding a child's rights pursuant to this section and assistance in understanding and enforcing these rights to each child who enters foster care or kinship foster care or when there is a change in the child's foster care plan. The information shall also include the telephone number and email address of the department, the child's assigned case manager, the department's office of the ombudsman and the ombudsman-citizens aide. A copy of these rights shall be posted in a conspicuous place in all foster care and group homes.

D. If a child who is in foster care or kinship foster care believes that the child's rights under this section have been violated, the child or the child's representative may:

1. File a complaint with the department, the department's office of the ombudsman or the ombudsman-citizens aide pursuant to section 41-1376. A formal grievance may be initiated with the ombudsman at any time.

2. Notify the juvenile court in the child's ongoing dependency, severance or adoption proceeding, either orally or in writing, that the child's rights are being violated and request appropriate equitable relief. The court shall act on the notification as necessary within its discretion to promote the best interest of the child.

E. The rights provided in this section do not establish an independent cause of action.

8-530. Foster parents and kinship foster care parents; rights

A. A foster parent or kinship foster care parent in this state has the following rights:

1. To be treated with consideration and respect for the foster parent or kinship foster care parent's personal dignity and privacy.

2. To be included as a valued member of the team that provides services to the foster child, including participation in meetings that involve the child's service team.

3. To receive support services that assist the foster parent or kinship foster care parent to care for the child in the foster home, including open and timely responses from agency personnel.

4. To be informed of all information regarding the child that will impact the foster home or family life during the care of the foster child.

5. To contribute to the permanency plan for the child in the foster home.

6. To have placement information kept confidential when it is necessary to protect the foster parent or kinship foster care parent and the members of the foster parent's or kinship foster care parent's household.

7. To be assisted in dealing with family loss and separation when a child leaves the foster home.

8. To be informed of all agency policies and procedures that relate to the foster parent's or kinship foster care parent's role as a foster parent or kinship foster care parent.

9. To receive training that will enhance the foster parent's or kinship foster care parent's skills and ability to cope as a foster parent or kinship foster care parent.

10. To report a violation of the rights specified in this section without fear of punishment, interference, coercion or retaliation.

11. To be able to receive services and reach personnel on a twenty-four hour, seven days per week basis.

12. To be granted a reasonable plan for respite from the role of foster parent or kinship foster care parent.

13. To confidentiality regarding issues that arise in the foster home.

14. To not be discriminated against on the basis of religion, race, color, creed, sex, national origin, age or physical disability.

15. To receive an evaluation on the foster parent's or kinship foster care parent's performance.

16. To be notified of a child returning to foster care pursuant to section 8-530.01 or when a child who is currently placed in foster care or kinship foster care becomes available for adoption.

B. The department shall provide information regarding a foster parent's or kinship foster care parent's rights pursuant to this section and assistance in understanding and enforcing these rights to each foster parent and kinship foster care parent when a child is placed in a foster parent's or kinship foster care parent's care or when there is a change in the child's foster care or kinship foster care plan. The information shall include the telephone number and email address of the department, the department's office of the ombudsman and the ombudsman-citizens aide.

C. If a foster parent or kinship foster care parent believes that the person's rights under this section have been violated, the foster parent or kinship foster care parent or the foster parent's or kinship foster care parent's representative may file a complaint with the department, the department's office of the ombudsman or the

ombudsman-citizens aide pursuant to section 41-1376. A formal grievance may be initiated with the ombudsman at any time. If a foster parent or kinship foster care parent or a foster parent's or kinship foster care parent's representative files a complaint pursuant to this subsection, the person may also notify the juvenile court and all parties to the child's ongoing dependency, severance or adoption proceeding orally or in writing of the complaint.

D. The rights provided in this section do not establish an independent cause of action.

E-5.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4, Articles 6-8, 10 & 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF FINANCIAL INSTITUTIONS**
Title 20, Chapter 4, Articles 6, 7, 8, 10 and 11, Department of Financial Institutions

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Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Insurance and Financial Institutions (Department) relates to twenty-six (26) rules in Title 20, Chapter 4, Article 6, 7, 8, 10, and 11. The Articles specifically cover:

- **Article 6** -Debt Management Companies
- **Article 7**-Escrow Agents
- **Article 8**- Trust Companies
- **Article 10** - Safe Deposit and Safekeeping
- **Article 11** - Public Depositories for Public Monies

In the prior 5YRR, which was approved by the council in February 2020, the Department identified a total of five (5) rules that needed to be amended. The Department has identified this course of action being completed as a result of the rules being amended effective October 8, 2023, the council approved these amendments during the August 1, 2023 council meeting.

Proposed Action

In the current report, the Department does not propose any course of action because these rules were amended in 2023 and the Department has identified no need to amend them at this time.

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:

As a result of this Five-Year Review Report, the Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the last rulemaking on each article. At the time of the last rulemakings for Articles 6, 7, and 8, the Department projected that the changes would produce minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to applicants and licensees. It was projected that Articles 10 and 11 would produce no financial impact because only language changes were being made to the rules.

Stakeholders are identified as debt management companies, businesses, licensees, debtors, the Director, and the Department.

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 has determined that the rule's benefits outweigh, within this State, the probable costs of the rule and impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective for all reviewed articles.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department states 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 Department states the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department states the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states 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?

No, the Department indicates that the rules are not more stringent than corresponding federal law.

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?

The rules in these Articles were not adopted after July 29, 2010 and therefore do not require a permit.

11. Conclusion

This Five Year Review Report from the Arizona Department of Insurance and Financial Institutions covers twenty-six rules across 5 articles in Title 20, Chapter 4 covering the subject matter of debt management companies, escrow agents, trust companies, safe deposit and safekeeping, and public depositories for public monies. The Department recently completed a rulemaking in 2023. As a result of the 2023 rulemaking, the Department has proposed no course of action because the rules meet their objectives, are consistent with other rules and statutes, are clear, concise, and understandable, and are being enforced as written.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: https://difi.az.gov

Katie Hobbs, Governor
Barbara D. Richardson, Director

September 10, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Five Year Review Report
Arizona Department of Insurance and Financial Institutions ("Department")
Title 20, Chapter 4, Articles 6 through 8, 10 and 11

Dear Chairperson Klein:

Please find enclosed the Five-Year Review Report of the Department for Title 20 (Commerce, Financial Institutions, and Insurance), Chapter 4 (Department of Insurance and Financial Institutions – Financial Institutions), Articles 6 (Debt Management Companies), 7 (Escrow Agents), 8 (Trust Companies), 10 (Safe Deposit and Safekeeping Code), and 11 (Public Depositories for Public Monies) which is due on or before September 30, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 6. Debt Management Companies

September 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-704, 6-709(M), 6-709(J), 6-710(1), 6-710(8), 6-714, and 6-709(A)

2. The objective of each rule:

Rule	Objective
R20-4-602	**Applications.** The objective of the rule is to specify the contents and procedures required for a debt management company to complete the application package for a license, branch license or license renewal.
R20-4-603	**Reports.** The objective of the rule is to specify the time frame of the annual reporting of the business and operations of each place of business, the acceptable method and documents for the annual reporting, the deadline for the annual reporting to the Department, and the timeframe within which the licensee must notify the Department of changes in ownership or of changes to officers, directors, trustees, partners or managing agents.
R20-4-604	**Records.** The objective of the rule is to interpret and advise the licensee about the nature and content of the records that must be maintained, the frequency with which certain records must be prepared, and of record-keeping procedures or practices.
R20-4-607	**Budget Analysis.** The objective of the rule is to specify information that must be documented in a budget analysis of a prospective debtor in determining that the person is reasonably able to make agreed-upon payments before accepting the account.
R20-4-611	**Advertising.** The objective of the rule is to establish requirements and prohibitions for advertising, communication or sales material to be used by a licensee.
R20-4-612	**Solvency and Minimum Liquid Assets.** The objective of the rule is to define liquid assets, specify the amount by which liquid assets must exceed current liabilities and debtor balances, and specify that a licensee must use generally accepted accounting principles to compute assets and liabilities.

3. Are the rules effective in achieving their objectives? **Yes X No __**

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 __**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (29 A.A.R. 1945, September 1, 2023). At that time, the Department projected that the changes would produce minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to applicants and licensees

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

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.

2019 Five Year Review Report Proposed Course of Action:

R20-4-602: The Department proposes to amend the rule by removing the verbiage from section (A) that directs the Department to order a credit report and replace it with language stating the applicant shall furnish a credit report as part of a completed application.

R20-4-603: The Department proposes to amend the rule by removing the verbiage from section (B) that directs the debt management company to, within ten days, send the department a copy, datestamped by the Arizona Corporation Commission, of each annual report and certificate of disclosure.

Response to Item 10:

The Department engaged in a rulemaking, effective October 2, 2023, that addressed both the proposed courses of action listed above.

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 rule's benefits outweigh, within this State, the probable costs of the rule and impose 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_**

No federal law is applicable to the subject of the 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:

Not applicable. The Department adopted the rules pertaining to debt management companies in 1978. In addition, the statutes, not the rules, establish the requirement for a license to operate as a debt management company (*See,* A.R.S. § 6-703.)

14. Proposed course of action

Because it recently engaged in a rulemaking on this Article (29 A.A.R. 1945, September 1, 2023), the Department has no planned course of action at this time.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 7. Escrow Agents

September 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-126, 6-814(A), 6-817, 6-831, 6-834 and 6-837.

2. The objective of each rule:

Rule	Objective
R20-4-701	**Change in Location of Business.** The objective of the rule is to notify the licensee about the notice requirements for any change in the location of the licensee's business and that a fee must be remitted.
R20-4-702	**Account Practices and Records.** The objective of the rule is to advise and describe what documentation is to be retained to enable the Director to reconstruct the details of each escrow transaction.
R20-4-703	**Preservation of Records.** The objective of the rule is to interpret and describe the procedure and practice requirements acceptable to the Department for the length of time and method of retaining records, books, and accounts pertaining to each escrow transaction
R20-4-704	**Subsidiary Account Records.** The objective of the rule is to interpret and advise the licensee of the procedure or practice requirements of the Department which governs the deposit of escrow monies
R20-4-708	**Financial Condition and Resources.** The objective of the rule is to establish a set of criteria the Director uses in evaluating an applicant's or escrow agent's financial condition and resources.

3. Are the rules effective in achieving their objectives? **Yes X No __**

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 __**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (29 A.A.R. 1949, September 1, 2023). At that time, the Department projected that the changes would produce minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to applicants and licensees

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

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.

2019 Five Year Review Report Proposed Course of Action:

R20-4-703: The department proposes to amend the rule by striking settlement date and replacing it with transaction. The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

Response to Item 10:

The Department engaged in a rulemaking, effective October 2, 2023, that addressed the proposed course of action for R20-4-703.

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 rule's benefits outweigh, within this State, the probable costs of the rule and impose 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_

No federal law is applicable to the subject of the 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:

Not applicable. The Department adopted the rules pertaining to escrow agents prior to 2010. In addition, the statutes, not the rules, establish the requirement for a license to operate as an escrow agent (*See,* A.R.S. § 6-813.)

14. Proposed course of action

Because it recently engaged in a rulemaking on this Article (29 A.A.R. 1949, September 1, 2023), the Department has no planned course of action at this tisme.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 8. Trust Companies

September 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-859, 6-860, 6-861, 6-862, 6-863(A)(8), 6-864, 6-865, 6-870.02, and 6-871

2. The objective of each rule:

Rule	Objective
R20-4-801	**Definitions.** The objective of the rule is to define terms used in the rules but not defined elsewhere, and to cross reference definitions either from the statutes or from other provisions of these rules.
R20-4-805	**Reports.** The objective of the rule is to specify the subject matter and contents of the reports required by the Director under the Director's statutory authority.
R20-4-806	**Records.** The objective of the rule is to provide the periods of time and the manner in which each licensee's records shall be kept.
R20-4-807	**Unsafe or Unsound Condition.** The objective of the rule is to notify licensees of the circumstances that indicate the licensee is conducting its business in an unsafe manner or its affairs are in unsound condition.
R20-4-808	**Administration of Fiduciary Powers.** The objective of the rule is to inform licensees of the standards of conduct for the administration of fiduciary powers, and the records required to prove compliance with those standards.
R20-4-809	**Fiduciary Duties.** The objective of the rule is to specify the primary duties of the licensees' management in the conduct of trust business.
R20-4-810	**Funds Awaiting Investment or Distribution.** The objective of the rule is to require prompt investment or distribution of funds held in trust by a licensee, to require that deposited funds be secured to the extent they are not covered by deposit insurance, and to permit retention of such funds in deposit accounts of a bank acting as a fiduciary under certain circumstances.
R20-4-811	**Investment of Trust Funds.** The objective of the rule is to specify the legal limits on the licensee's investment discretion, and to clarify the sole legal basis on which a licensee may rely in deciding to make collective investments.
R20-4-812	**Self-dealing.** The objective of the rule is to explicitly advise licensees of the acts of self-dealing that are prohibited under the statute and the rules in Article 8. The rule also lists the special circumstances that create exceptions to the rule's prohibitions.
R20-4-813	**Custody of Investments.** The objective of the rule is to advise licensees of the permissible means of custody and control of account assets, as well the records required to demonstrate compliance with the rule.
R20-4-814	**Compensation.** The objective of the rule is to describe the legal bases under which a licensee may charge a fee for its services, and to list those circumstances under which neither it, nor its employees, may receive a fee.

R20-4-815	**Collective Investments.** The objective of the rule is to establish the procedures used by licensees to establish a common trust fund, and to list the specific duties imposed at the organization phase.
R20-4-816	**Termination of Trust or Fiduciary Powers and Duties.** The objective of the rule is to describe the procedures a licensee shall use to surrender its right to conduct trust business. It also states the level of regulation imposed while a licensee winds up its trust business affairs.

3. **Are the rules effective in achieving their objectives?** **Yes X No __**

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 __**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No _X_**

8. **Economic, small business, and consumer impact comparison:**

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (29 A.A.R. 1952, September 1, 2023). At that time, the Department projected that the changes would produce minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to licensees.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ___ No _X_**

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.

2019 Five Year Review Report Proposed Course of Action:

R20-4-801: The department proposes to amend the rule to reflect the definition of "Superintendent" found in A.R.S. § 6-101(16). The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

R20-4-811: The department proposes to amend the rule to reflect the intended statues found in A.R.S. §§14-7501 through 14-7512. The Department will request an exemption to Executive Order 2019-01 and if granted, will submit a Notice of Proposed Rule Making by July 31, 2020.

Response to Item 10:

The Department engaged in a rulemaking, effective October 8, 2023, that replaced "Superintendent" with "Director" in response to the structural change in the Department and defined "Director." In addition, the Department corrected the cites to the statutes in R20-4-811.

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 rule's benefits outweigh, within this State, the probable costs of the rule and impose 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_

Section R20-4-807 (Unsafe or Unsound Condition) finds that a trust company may be in unsafe or unsound condition if it violates any federal requirement for maintaining trusts, common trust funds, or other accounts, or if it violates any applicable federal law or regulation regarding corporations or securities. The rule is not more stringent than the federal law.

Section R20-4-810 (Funds Awaiting Investment or Distribution) requires collateral to qualify as the following types of federal securities:

- Direct obligations of the United States or any agency, department, division, or administration of the federal government;
- Any other obligations fully guaranteed by the United States government as to principal and interest;
- Obligations of the Federal Reserve Bank; and
- Readily marketable securities that qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1.

No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds. The rule is not more stringent than the federal law.

Section R20-4-812 (Self-dealing), subsection (C), prohibits a trust department or trust company from selling or loaning trust property to itself or certain persons unless expressly authorized by federal law. The rule is not more stringent that the federal law.

In the same rule, subsection (F) allows a trust department or trust company to loan trust property held in one account to another of its accounts if the transaction is not prohibited by applicable federal law. The rule is not more stringent than the federal law.

In the same rule, subsection (G) allows a trust department or trust company to make a loan to a trust account, taking trust assets of the borrowing account as security for repayment if the transaction is not prohibited by applicable federal law. The rule is not more stringent than the 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:

Not applicable. The Department adopted the rules pertaining to trust companies in 1977. In addition, the statutes, not the rules, establish the requirement for a license to operate as a trust company (*See,* A.R.S. § 6-853.)

14. Proposed course of action

Because it recently engaged in a rulemaking on this Article (29 A.A.R. 1952, September 1, 2023), the Department has no planned course of action at this time.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 10. Safe Deposit and Safekeeping Code

September 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. § 6-1003

2. The objective of each rule:

Rule	Objective
R20-4-1001	**Notice of Change of Location of Safe Deposit Repository.** The objective of the rule is to specify the form and timing of notice required to comply with A.R.S. § 6-1003 so that safe deposit box lessees are notified when a safe deposit box will be moved

3. Are the rules effective in achieving their objectives? **Yes X No __**

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 __**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (29 A.A.R. 1937, September 1, 2023). At that time, the Department projected that the changes would produce no financial impact because the only change being made to the rule was to replace "Superintendent" with "Director."

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The 2019 Five Year Review Report proposed no course of Action for Article 10.

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 rule's benefits outweigh, within this State, the probable costs of the rule and impose 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_

Not applicable. No federal law is referenced in R20-6-1001.

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:

Not applicable. The subject matter of the rule pertains to repositories not permits.

14. Proposed course of action

Because it recently engaged in a rulemaking on this Article (29 A.A.R. 1937, September 1, 2023), the Department has no planned course of action at this time.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 11. Public Depositories for Public Monies

September 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. § 35-321(3)

2. The objective of each rule:

Rule	Objective
R20-4-1101	**Capital Structure of Banks; Defined.** The objective of the rule is to specify the components of the statutory term "capital structure" for the benefit of reporting requirements and the definition in the state treasurer's statutes.

3. Are the rules effective in achieving their objectives? **Yes X No __**

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 __**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (29 A.A.R. 1937, September 1, 2023). At that time, the Department projected that the changes would produce no financial impact because the only substantive change being made to the rule was to correct the statutory reference from "Article 2" to "Article 2.1."

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The 2019 Five Year Review Report proposed no course of Action for Article 11.

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 rule's benefits outweigh, within this State, the probable costs of the rule and impose 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_

Not applicable. No federal law is referenced in R20-6-1101.

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:

Not applicable. The subject matter of the rule pertains to the definition of "capital structure" not permits.

14. Proposed course of action

Because it recently engaged in a rulemaking on this Article (29 A.A.R. 1937, September 1, 2023), the Department has no planned course of action at this time.

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receiving the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116), or its successor, and use the system for all aspects of licensure pursuant to this title, title 32, chapter 9 and title 44, chapter 2.1. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

Arizona Administrative CODE
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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS

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*.

At the request of the Department a correction has been made to Section R20-4-1220 (Supp. 24-1).

No other changes have been made to this Chapter since Supp. 23-3.

Questions about these rules? Contact:

Department:	Department of Insurance and Financial Institutions
Address:	100 N. 15th Ave., Suite 261 Phoenix, AZ 85007-2630
Website:	https://difi.az.gov
Name:	Mary E. Kosinski
Telephone:	(602) 364-3476
Email:	mary.kosinski@difi.az.gov

The release of this Chapter in Supp. 24-1 replaces Supp. 23-3, 1-49 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.

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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. 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 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, 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.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 7 Phoenix, AZ 85007

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TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - FINANCIAL INSTITUTIONS

Authority: A.R.S. § 20-124

Supp. 24-1

Editor's Note: The name of the Arizona Department of Financial Institutions was changed to the Department of Insurance and Financial Institutions under Laws 2019, Ch. 252, effective July 1, 2020 (Supp. 22-2).

Editor's Note: The Banking Department's name was changed to the Arizona Department of Financial Institutions under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Ch. 188, effective January 1, 2006 (Supp. 06-1).

Editor's Note: Title 20, formerly Commerce, Banking, and Insurance, is now Commerce, Financial Institutions, and Insurance. This change became effective when the Banking Department changed its name to the Department of Financial Institutions, effective January 1, 2006 (Supp. 06-1).

20 A.A.C. 4, consisting of R20-4-101 through R20-4-106, R20-4-201 through R20-4-215, R20-4-301 through R20-4-331, R20-4-401 through R20-4-402, R20-4-501 through R20-4-536, R20-4-601 through R20-4-620, R20-4-701 through R20-4-707, R20-4-801 through R20-4-816, R20-4-901 through R20-4-924, R20-4-1001, R20-4-1101 through R20-4-1102, R20-4-1201 through R20-4-1220, R20-4-1401 through R20-4-1410, R20-4-1501 through R20-4-1530, R20-4-1601 through R20-4-1604, and R20-4-1701 through R20-4-1706, recodified from 4 A.A.C. 4, consisting of R4-4-101 through R4-4-106, R4-4-201 through R4-4-215, R4-4-301 through R4-4-331, R4-4-401 through R4-4-402, R4-4-501 through R4-4-536, R4-4-601 through R4-4-620, R4-4-701 through R4-4-707, R4-4-801 through R4-4-816, R4-4-901 through R4-4-924, R4-4-1001, R4-4-1101 through R4-4-1102, R4-4-1201 through R4-4-1220, R4-4-1401 through R4-4-1410, R4-4-1501 through R4-4-1530, R4-4-1601 through R4-4-1604, and R4-4-1701 through R4-4-1706, pursuant to R1-1-102 (Supp. 95-1).

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ARTICLE 1. GENERAL

R20-4-101. Scope of Article

The rules in this Article apply to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent.

Historical Note

Former Rule 1. Former R4-4-101 repealed, new R4-4-101 adopted effective August 16, 1991 (Supp. 91-3). R20-4-101 recodified from R4-4-101 (Supp. 95-1).

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
   a. Is knowledgeable about the licensee's Arizona activities;
   b. Supervises compliance with:
      i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
      ii. Other applicable laws and rules; and
   c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
   a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
   b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
   c. Insurance commissions;
   d. Contingent or additional interest, including interest based on net operating income; or
   e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
    a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;
       i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
       ii. To a borrower, concerning the location or identity of potential investors or lenders; or
    b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
    c. Processing a loan; but
    d. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:
       i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
       ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
       iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
       iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modifica-

tion, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.

12. "Electronic record" has the meaning stated at A.R.S. § 44-7002(7).
13. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
    a. The person is entitled to payment, or is paid, by the licensee;
    b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
    c. The licensee has the right to hire and fire the employee and the employee's assistants;
    d. The licensee directs the methods and procedures for performing the employee's job;
    e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
    f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
14. "Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
15. "Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
16. "Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
17. "Holds out to the public," as used in this Section's definition of "branch office," means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Holds out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Holds out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.
18. "Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
19. "Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.
20. "Person" means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
21. "Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
22. "Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
    a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
    b. Obtains a completed Employment Eligibility Verification (Form I-9);
    c. Obtains a completed and signed employment application;
    d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
    e. Consults with the applicant's most recent or next most recent employer, if any;
    f. Inquiries regarding the applicant's qualifications and competence for the position;
    g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
    h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
23. "Record" has the meaning stated at A.R.S. § 44-7002(13).
24. "Registered to do business in this state" means:
    a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
    b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
    c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
    d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
    e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:

        All the current amendments, or

A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;

f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;

g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;

h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or

i. The entity is exempt from registration.

25. "Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.

26. "Resident of this state" means a natural person domiciled in Arizona.

27. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:

a. Lives in Arizona during the entire period of designation as the responsible individual on a license;

b. Is in active management of a licensee's affairs;

c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and

d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

Historical Note

Former Rule 2. Former R4-4-102 repealed, new R4-4-102 adopted effective August 16, 1991 (Supp. 91-3). R20-4-102 recodified from R4-4-102 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 668, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-103. Fingerprints

A. A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.

B. A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.

C. A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:

1. A municipal police department,
2. A local sheriff's office, or
3. Another law enforcement authority recognized by the Superintendent.

Historical Note

Former Rule 3. Former R4-4-103 repealed, new R4-4-103 adopted effective August 16, 1991 (Supp. 91-3). R20-4-103 recodified from R4-4-103 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department of Financial Institutions form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require additional information necessary to complete an application or other form.

Historical Note

Former Rule 4. Former R4-4-104 repealed, new R4-4-104 adopted effective August 16, 1991 (Supp. 91-3). R20-4-104 recodified from R4-4-104 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-105. Claims Against a Deposit in Place of Bond

A. As used in this Section:

1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place of a bond.
2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the Superintendent.
3. "Verified claim" means a claim filed with the Superintendent under subsection (B).
4. "Award" means an amount of money granted under subsection (F).

B. A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:

1. Against a depositor;
2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
3. Documented by:
   a. A certified copy of the complaint in the action;
   b. A certified copy of the judgment in the action;
   c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
   d. A statement of any amounts recovered on the judgment; and
   e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.

C. A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.

D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.

E. The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:
1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
3. The judgment's execution has been stayed for any reason;
4. The judgment was procured through fraud or collusion;
5. The judgment has been satisfied from other sources; or
6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.

F. If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:
1. Attorney's fees, and
2. Amounts previously paid on the judgment.

G. A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.

H. If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).

I. If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
   a. Each granted claim shall receive a pro rata share of the total deposit.
   b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
      i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
      ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
   c. The Superintendent shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.

J. A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.

K. The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certified copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). R20-4-105 recodified from R4-4-105 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Superintendent if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the Superintendent a copy of the:
1. Petition for relief,
2. Schedule of assets and liabilities,
3. Statement of financial affairs,
4. List of creditors, and
5. Plan of reorganization.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). R20-4-106 recodified from R4-4-106 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-107. Licensing Time-frames

A. As used in this Section, "application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.

B. The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
1. Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.
2. An applicant whose application is incomplete shall supply the missing information within 60 days after the date

of the notice. If an applicant shows good cause in writing before the expiration of the 60 day time limit, the Superintendent shall extend the period for administrative completion of an application. The administrative completeness review time-frame stops running on the postmark date of the Department's written notice of an incomplete application, and resumes when the Department receives a complete application. If the applicant fails to submit a complete application within the specified time limit, the Department shall reject the application and close the file. An applicant may reapply.

3. The substantive review time-frame begins to run on the postmark date of the Department's written notice that the application is administratively complete.
4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal in the form required by A.R.S. § 41-1076.
5. The Department shall calculate time limits prescribed in this Section under R2-19-107.

C. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	30	30	60
8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			

	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	30	15	45
17	Motor Vehicle Dealer	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
18	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
19	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	Loan Originators	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

Historical Note
Table A adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation
A licensee shall deliver to the Director a copy of each amendment to the licensee's articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Director, an officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Former Rule 1. R20-4-201 recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-202. Bylaws
A licensee shall deliver to the Director a copy of each amendment to the licensee's bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Former Rule 2. R20-4-202 recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-203. Repealed

Historical Note
Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-204. Repealed

Historical Note
Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-205. Repealed

Historical Note
Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-206. Bankers Blanket Bond Coverage - A.R.S. § 6-188
A. Each bank shall carry at least the following basic blanket bond coverage listed in Table B.
B. Each bank shall supplement the bankers blanket bond coverage with at least a $2,000,000 excess fidelity bond.

Historical Note
Former Rule 6. R20-4-206 recodified from R4-4-206 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

Table B. Basic Blanket Bond Coverage

Banks with Deposits of:			**Amounts:**
Less than $25,000,000			$300,000
25,000,000	to	35,000,000	350,000

35,000,000	to	50,000,000	450,000
50,000,000	to	75,000,000	550,000
75,000,000	to	100,000,000	700,000
100,000,000	to	150,000,000	850,000
150,000,000	to	250,000,000	1,200,000
250,000,000	to	500,000,000	1,700,000
500,000,000	to	1,000,000,000	2,500,000
1,000,000,000	to	2,000,000,000	4,000,000
2,000,000,000	to	5,000,000,000	6,000,000
5,000,000,000	to	20,000,000,000	9,000,000
Over 20,000,000,000			10,000,000

Historical Note

Table B removed from R20-4-206(A) to conform with the codification scheme of this Chapter and amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-207. Capital Obligations

A. An applicant for a Director's order of approval to issue a capital obligation shall submit the following documents to the Director and shall not issue any capital obligation before the Director issues the order of approval. The required documents are:

1. A certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation;
2. A copy of the agreement underlying the capital obligation;
3. A copy of the note or debenture intended to represent the capital obligation; and
4. A copy of the prospectus, if any, proposed for use in the sale of the capital obligation.

B. Each document evidencing a capital obligation shall:

1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.
2. Have a maturity provision that either:
   a. Gives the obligation a maturity of at least five years, or
   b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least five years. The restriction on maturity stated in this subsection does not apply to any obligation that otherwise meets all the requirements of this Section if the Director determines that exigent circumstances require the issuance of the obligation without regard to any restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.
3. State expressly on its face that the obligation:
   a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and
   b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. § 6-354.
4. Be unsecured.
5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Director's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.
6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.
7. State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation.

C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Director. The Director may grant that authority in the initial order of approval or in a later order of approval.

Historical Note

Former Rule 7. R20-4-207 recodified from R4-4-207 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 2155, effective May 4, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-208. Repealed

Historical Note

Former Rule 8. R20-4-208 recodified from R4-4-208 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-209. Notice of Permanent Closing of Banking Office

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Director specifying the banking office it plans to close and the closing date. The bank shall ensure that the Director receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.

Historical Note

Former Rule 9. R20-4-209 recodified from R4-4-209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5388, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-210. Repealed

Historical Note

Former Rule 10. R20-4-210 recodified from R4-4-210 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-211. Application for a Banking Permit

A. Before an application is filed, the representatives of the potential applicant shall meet with the Director to discuss capitalization, location, and management of the proposed bank.

B. After the meeting required by subsection (A), persons who wish to proceed with the application process shall submit an application in the form the Director prescribes. The applicant shall support the application with sufficient information to enable the Director to make a determination.

Historical Note

Former Rule 11. R20-4-211 recodified from R4-4-211 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-212. Repealed

Historical Note
Former Rule 12. Amended effective September 4, 1981 (Supp. 81-4). R20-4-212 recodified from R4-4-212 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-213. Repealed

Historical Note
Former Rule 13. Repealed effective September 13, 1981 (Supp. 81-5). R20-4-213 recodified from R4-4-213 (Supp. 95-1).

R20-4-214. Preservation of Records

A. Every bank shall keep its corporate and business records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. Copies complying with this subsection, when satisfactorily identified, have the same evidentiary status as an original. A bank may keep its records as electronic records if the bank can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. A bank shall keep its corporate and business records for the period required by this Section. These periods are measured from the date of the last entry or final action date. A bank shall have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).

C. Beginning on the effective date of this Section, corporate and business records of a bank operating in the state of Arizona are classified, and their retention periods are prescribed, according to the schedule in subsection (D). Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in subsections (C)(1) through (20).

1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.
2. "AC" means after closure.
3. "ACH" means automated clearing house.
4. "AE" means after expiration.
5. "ALC" means after last contact.
6. "AP" means after paid.
7. "ATD" means after termination date.
8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.
9. "FDIC" means the Federal Deposit Insurance Corporation.
10. "FHA" means the Federal Housing Administration.
11. "FHLMC" means the Federal Home Loan Mortgage Corporation.
12. "FNMA" means the Federal National Mortgage Association.
13. "GNMA" means the Government National Mortgage Association.
14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.
15. "M" means months.
16. "P" means the bank shall keep the record permanently.
17. "PMI" means private mortgage insurance.
18. "SAR" means a suspicious activity report required by the Federal Bank Secrecy Act.
19. "TTL" means a treasury, tax, and loan account maintained by a bank.
20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.

D. Retention Schedule

1. Accounting and Auditing

a.	Accrual and bond amortization	3
b.	Audit report	6
c.	Audit work papers	3
d.	Bank call, income and dividend report	5
e.	Bill, statement, or invoice – paid	7
f.	Budget work papers	2
g.	Collateral vault "in-and-out" ticket	1
h.	Daily reserve computation	1
i.	Earnings report	7
j.	Expense voucher or invoice	7
k.	Financial statement	7
l.	Interoffice reconciliation	1
m.	Interoffice transaction	1
n.	Periodic statement for account owned by bank	2
o.	Reconcilement of deposits – due to bank	2
p.	Reconcilement register – due from bank	2
q.	Return and cash item register	1
r.	Service contract	2
s.	Treasury tax and loan account	2
t.	Unclaimed property record	5

2. Administration

a.	Articles of incorporation or association, bylaws or other record of organization	P
b.	Bankers blanket bond-record showing compliance	5AE
c.	Bank examiner's report	7
d.	Capital note issuance and transfer record	P
e.	Depreciation record – office equipment	3
f.	Dividend check and register	7
g.	Dividend check – outstanding	P
h.	Expired policy insuring the bank	3 AE
i.	FDIC assessment base, record	5
j.	FDIC certificate	P
k.	Insurance policy number, record of premium paid and amount recovered	3 AE
l.	Legal proceedings when completed	5
m.	Minute book of:	
	i. Meetings of the board of directors	P
	ii. Meeting of committees of the board of directors	P
	iii. Shareholders' meetings	P
n.	Postage meter record book (from date of final entry)	1
o.	Real estate documentation	5 ATD
p.	Report to directors	3
q.	Stock issuance and transfer record	P
r.	Required report to supervisory agency	3
s.	Tax controversy or proceeding when completed	7
t.	Tax record not material to any controversy	7
u.	Voting list and proxies	3

3. Collections

a.	Collection payment record	1
b.	Collection receipt – carbon	1
c.	Collection register	1
d.	Coupon cash letter – outgoing	1
e.	Coupon envelope	1
f.	Customer file copy	1
g.	Incoming collection letter	1
h.	Incoming contract or note letter	1

4. Customer service
   - a. Broker account holder – identification 5
   - b. Broker's confirmation 3
   - c. Broker's invoice 3
   - d. Broker's statement 3
   - e. E-Bond application 2
   - f. E-Bond sold or redeemed – record 2
   - g. E-Bond transmittal letter 2
   - h. Lock box daily receipts 1
   - i. Night depository agreement 1 AC
   - j. Night depository daily record 1
   - k. Safekeeping record and receipt 5
   - l. Securities buy order and sell order 3
5. Data processing (management information systems)
   - a. Back-up data (for reconstruction) daily, end of month, quarter, or year 1
   - b. Disaster recovery program P
   - c. Film copy of every IRS financial reporting form 6
   - d. Program change P
   - e. System, program and procedure manual P
6. Deposits
   - a. Account opened and account closed 1
   - b. Certificate of deposit purchase record 7
   - c. Check paid, withdrawal slip, and other debits to account 7
   - d. Club account check register 1
   - e. Club account coupon 1
   - f. SAR – for suspicious transaction under $10,000 5
   - g. CTR – for transaction exceeding $10,000 5
   - h. Customer authorization, resolution, and signature card 6 AC
   - i. Deposit account record needed to reconstruct 7
   - j. Deposit and other credits 7
   - k. Dormant account – after closed or escheated 7 ALC
   - l. Form 1096 and 1099 reports to IRS 7
   - m. Individual retirement account record 7
   - n. Interest check or other record of interest payment and reports 7
   - o. Internal management reports:
     - i. Large balance 1
     - ii. Overdraft 1
     - iii. Public funds 1
     - iv. Service charges 1
     - v. Stop payment 1
     - vi. Uncollected funds 1
     - vii. Unposted item 1
     - viii. Zero balance 1
   - p. Ledger card 5 AC
   - q. Power of attorney document 7 ATD
   - r. Receipt for statement held at customer's request 1
   - s. Record showing compliance with the following federal regulations. The state retention period applies unless, and until, it is preempted by federal law:
     - i. Regulation CC, Expedited Funds Availability Act 2
     - ii. Regulation DD, Truth in Savings Act 2
     - iii. Regulation E, Electronic Funds Transfer Act 2
   - t. Returned statement and canceled checks 6
   - u. Statement 6
   - v. Stop payment order 6 AE
   - w. Document used to request and receive Tax Identification Number 6
   - x. Transaction journal 6
   - y. Trial balance 6
7. Due from banks
   - a. Advice from correspondent bank 1
   - b. Bank statement 1
   - c. Draft – original 7
   - d. Draft register or copy 1 AP
   - e. Duplicate check – information and documentation pertaining to issuance 7
   - f. Reconcilement register 1
8. Due to banks
   - a. Account opened and account closed – reports 1
   - b. Advice – copy 1
   - c. Incoming cash letter memo for credit 1
   - d. Incoming cash letter for remittance 1
   - e. Reconcilement register (TTL) 2
   - f. Reconcilement verification 1
   - g. Resolution 2 AC
   - h. Signature card 6 AC
   - i. Trial balance (fiche) 7
   - j. Undelivered statement, reconstruction available from bank records 1
   - k. Undelivered statement, reconstruction not possible 7
9. General
   - a. Address change order 1
   - b. Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check 1
   - c. Writ of attachment or garnishment 5
   - d. Attachment, release 5
   - e. Armored car receipt 1
   - f. Check book order 1
   - g. Check book – receipt 1
   - h. Court order memorandum record 5
   - i. Notice of Protest 1
   - j. Vault record – opening and closing 1
   - k. Wire transfer debit entry and credit entry 7
10. General ledger
    - a. Daily statement of condition 3
    - b. General journal – if byproduct of posting the general ledger 3
    - c. General journal – if used as book of original entry with description 3
    - d. General ledger 5
    - e. General ledger ticket – debit and credit 2
11. International department
    - a. Broker account holder – identification 5
    - b. Cable copy 7
    - c. Cable requisition 7
    - d. Collection paid 1
    - e. Correspondence 2
    - f. Draft 7
    - g. Foreign collection register 6
    - h. Foreign draft application 6
    - i. Foreign draft – carbon 2 ATD
    - j. Foreign exchange remittance sheet or book 6
    - k. Foreign financial account – record 7
    - l. Foreign mail transfer application 6
    - m. Foreign mail transfer – carbon 2 ATD
    - n. Foreign outstanding cash 2
    - o. Foreign payment – incoming 2
    - p. Letter of credit application 2
    - q. Letter of credit ledger sheet 7
    - r. Transfer outside of the United States in excess of $10,000 – record 5
12. Investments
    - a. Bonds
      - i. Amortization record 6
      - ii. Confirmation 3
      - iii. Safekeeping receipt 2
    - b. Broker's securities
      - i. Broker's invoice 3
      - ii. Broker's statement 3
      - iii. Report of lost or stolen securities 3
      - iv. Safekeeping advice 2
      - v. Taxpayer identification number 5

c. Commercial paper
  i. Broker's advice 2
  ii. Purchase order 2
  iii. Remittance advice 2
d. Mortgage-backed securities
  i. Buy-and-sell agreement 3
  ii. Commitment letter 7
  iii. FHLMC and FNMA loan file 7
  iv. GNMA certificate 7
  v. Interest accrual record 7
  vi. Monthly remittance report 7

13. Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection. This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required by this subsection.
  a. All loans – general
    i. Application for loan approval 6
    ii. Appraisal 6
    iii. Borrower's financial statement 6
    iv. Charge-off record 10
    v. Charged off note 10
    vi. Collateral file 6
    vii. Correspondence 6
    viii. Credit file- all documentation 6
    ix. Credit report 6
    x. Daily proof and record 6
    xi. Loan committee minutes P
    xii. Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry 6
    xiii. Other documentation for reconstruction of loan 2
  b. Commercial loans
    i. Application for loan denied 12 M
    ii. Bill of sale 6
    iii. Borrowing resolution 3
    iv. Business annual report (fiscal or year end) – after date of report 3
    v. Business cash-flow analysis report – after date of report 3
    vi. Business tax return – after date of return 6
    vii. Commitment letter 6
    viii. Copy of mortgage note or deed of trust 6
    ix. Evidence of insurance 6
    x. Guaranty 6
    xi. Letter of credit 6
    xii. Participation agreement 6
    xiii. Promissory note 6
    xiv. Purchase and sale agreement 6
    xv. Security agreement 6
    xvi. Title documentation 6
    xvii. UCC filing 6
  c. Consumer loans
    i. Application for loan denied, including adverse action notice 25 M
    ii. Collateral record 6
    iii. Hazard insurance record 6
    iv. Invoice 6
    v. Life and disability insurance record 6
    vi. Overdraft loan agreement 6
    vii. Promissory note and modification agreement – copy 6
    viii. Title documentation 6
    ix. UCC filing – copy 6
  d. Real estate loans
    i. Assignment of escrow 6
    ii. Assumption 6
    iii. Commitment letter 6
    iv. Copy of deed of trust or mortgage note, as it may have been modified 6
    v. Escrow analysis record 6
    vi. Evidence of any FHA or PMI insurance required 6
    vii. Hazard insurance life of loan
    viii. Proof of insurance excluding hazard 6
    ix. Sales contract 6
    x. Settlement sheet 6
    xi. Survey 6
    xii. Title documentation 6
  e. Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:
    i. Certificate of occupancy 6
    ii. Construction progress report 6
    iii. Contractor's cost breakdown 6
    iv. Disbursement documentation 6
    v. Inspection report 6
    vi. Residential construction specifications and material list 6

14. Official checks and drafts
  a. Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft 7
  b. Bank draft 3
  c. Cashier's check – canceled 7
  d. Cashier's check register – copy 7
  e. Expense check – canceled 7
  f. Expense check register – copy 7
  g. Expense voucher or invoice 7
  h. Money order – bank or personal 7
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Historical Note
Former Rule 14. R20-4-214 recodified from R4-4-214 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4142, effective September 12, 2001 (Supp. 01-3). Missing notation in subsection (D)(1)(j) corrected as proposed at 7 A.A.R. 2491 (Supp. 20-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-215. Trust Business
Each bank authorized to conduct trust business under their banking permit shall comply with the applicable requirements of R20-4-808 through R20-4-816.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-215 recodified from R4-4-215 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

ARTICLE 3. EXPIRED

R20-4-301. Expired

Historical Note
Former Rule 1. R20-4-301 recodified from R4-4-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-302. Repealed

Historical Note
Former Rule 2; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-302 recodified from R4-4-302 (Supp. 95-1).

R20-4-303. Expired

Historical Note
Former Rule 3. R20-4-303 recodified from R4-4-303 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-304. Expired

Historical Note
Former Rule 4. R20-4-304 recodified from R4-4-304 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-305. Repealed

Historical Note
Former Rule 5. R20-4-305 recodified from R4-4-305 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-306. Repealed

Historical Note
Former Rule 6. R20-4-306 recodified from R4-4-306 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-307. Repealed

Historical Note
Former Rule 7. R20-4-307 recodified from R4-4-307 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-308. Repealed

Historical Note
Former Rule 8. R20-4-308 recodified from R4-4-308 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-309. Expired

Historical Note
Former Rule 9. R20-4-309 recodified from R4-4-309 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-310. Reserved

R20-4-311. Repealed

Historical Note
Former Rule 11; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-311 recodified from R4-4-311 (Supp. 95-1).

R20-4-312. Repealed

Historical Note
Former Rule 12. R20-4-312 recodified from R4-4-312 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-313. Reserved

R20-4-314. Repealed

Historical Note
Former Rule 14. R20-4-314 recodified from R4-4-314 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-315. Repealed

Historical Note
Former Rule 15. R20-4-315 recodified from R4-4-315 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-316. Repealed

Historical Note
Former Rule 16. R20-4-316 recodified from R4-4-316 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-317. Repealed

Historical Note
Former Rule 17; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-317 recodified from R4-4-317 (Supp. 95-1).

R20-4-318. Expired

Historical Note
Former Rule 18. R20-4-318 recodified from R4-4-318 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J)

at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-319. Repealed

Historical Note
Former Rule 19. R20-4-319 recodified from R4-4-319 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-320. Repealed

Historical Note
Former Rule 20. R20-4-320 recodified from R4-4-320 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-321. Repealed

Historical Note
Former Rule 21. R20-4-321 recodified from R4-4-321 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-322. Repealed

Historical Note
Former Rule 22; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-322 recodified from R4-4-322 (Supp. 95-1).

R20-4-323. Repealed

Historical Note
Former Rule 23. R20-4-323 recodified from R4-4-323 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-324. Expired

Historical Note
Former Rule 24. R20-4-324 recodified from R4-4-324 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-325. Expired

Historical Note
Former Rule 25. R20-4-325 recodified from R4-4-325 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-326. Expired

Historical Note
Former Rule 26. R20-4-326 recodified from R4-4-326 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-327. Expired

Historical Note
Former Rule 27. R20-4-327 recodified from R4-4-327 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-328. Expired

Historical Note
Former Rule 28. R20-4-328 recodified from R4-4-328 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-329. Repealed

Historical Note
Former Rule 29. R20-4-329 recodified from R4-4-329 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-330. Expired

Historical Note
Original Rule. R20-4-330 recodified from R4-4-330 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-331. Repealed

Historical Note
Original Rule. R20-4-331 recodified from R4-4-331 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

ARTICLE 4. CREDIT UNIONS

R20-4-401. Fidelity Bond Coverage

A. A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.

B. A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.

C. A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Director to transact surety business in Arizona.

Historical Note
Former Rule 1. R20-4-401 recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-402. Repealed

Historical Note
Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 5. CONSUMER LENDERS

R20-4-501. Repealed

Historical Note
Former Rule 1. R20-4-501 recodified from R4-4-501 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-502. Repealed

Historical Note
Former Rule 2. R20-4-502 recodified from R4-4-502 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-503. Adjustments in Precomputed Charges

A licensee shall adjust the total precomputed charges if the first installment period is more or less than one month in duration. The licensee's records shall reflect the adjustment's collection in one of three ways.

1. In the first installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

Historical Note
Former Rule 3. R20-4-503 recodified from R4-4-503 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-504. Repealed

Historical Note
Former Rule 4. R20-4-504 recodified from R4-4-504 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-505. Repealed

Historical Note
Former Rule 5. R20-4-505 recodified from R4-4-505 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-506. Repealed

Historical Note
Former Rule 6. R20-4-506 recodified from R4-4-506 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-507. Repealed

Historical Note
Former Rule 7. R20-4-507 recodified from R4-4-507 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full
If a borrower repays a loan before the due date of the final installment, the licensee shall calculate any refund or credit due on the precomputed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

Historical Note
Former Rule 8. R20-4-508 recodified from R4-4-508 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-509. Repealed

Historical Note
Former Rule 9. R20-4-509 recodified from R4-4-509 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-510. Repealed

Historical Note
Former Rule 10. R20-4-510 recodified from R4-4-510 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-511. Repealed

Historical Note
Former Rule 11. R20-4-511 recodified from R4-4-511 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-512. Reserved

R20-4-513. Repealed

Historical Note
Former Rule 13. R20-4-513 recodified from R4-4-513 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-514. Repealed

Historical Note
Former Rule 14. R20-4-514 recodified from R4-4-514 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-515. Repealed

Historical Note
Former Rule 15. R20-4-515 recodified from R4-4-515 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-516. Repealed

Historical Note
Former Rule 16. R20-4-516 recodified from R4-4-516 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-517. Repealed

Historical Note
Former Rule 17. R20-4-517 recodified from R4-4-517 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-518. Deferral Fee

A. A licensee may collect a deferral fee at the time it agrees to a deferment or at any time after the assessment of a deferral fee. If a licensee receives a payment after it agrees to a deferment, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.

B. If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment first to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

Historical Note
Former Rule 18. R20-4-518 recodified from R4-4-518 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-519. Deferment Statement
A licensee shall give the borrower a statement at the time it agrees to a deferment and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

Historical Note

Former Rule 19. R20-4-519 recodified from R4-4-519 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-520. Repealed

Historical Note

Former Rule 20. R20-4-520 recodified from R4-4-520 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-521. Repealed

Historical Note

Former Rule 21. R20-4-521 recodified from R4-4-521 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-522. Repealed

Historical Note

Former Rule 22. R20-4-522 recodified from R4-4-522 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-523. Repealed

Historical Note

Former Rule 23. R20-4-523 recodified from R4-4-523 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-524. Books, Accounts, and Records

A. A licensee may keep its books, accounts, and records as electronic records if the licensee can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. A licensee authorized under A.R.S. Title 6, Chapter 5 shall:

1. Keep its books, accounts, and records of operations separate from the books, accounts, and records of its other business activities; and
2. In addition to any statutory requirements, the books, accounts, and records of operations shall include the following:
   a. A file containing a record of all legal actions brought during the fiscal year which the licensee shall keep until the Department conducts its examination of the licensee;
   b. An itemized record of disbursement of the proceeds of each loan which shall also include, if the licensee makes precomputed loans, the amount of refund on each loan that is renewed or refinanced;
   c. A record of the receipt of all allowable fees;
   d. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan; and
   e. A record of the borrower's voluntary election to purchase any insurance in connection with a loan if that insurance is sold by the licensee.

Historical Note

Former Rule 24. R20-4-524 recodified from R4-4-524 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-525. Repealed

Historical Note

Former Rule 25. R20-4-525 recodified from R4-4-525 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-526. Repealed

Historical Note

Former Rule 26. R20-4-526 recodified from R4-4-526 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-527. Repealed

Historical Note

Former Rule 27. R20-4-527 recodified from R4-4-527 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-528. Repealed

Historical Note

Former Rule 28. R20-4-528 recodified from R4-4-528 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-529. Repealed

Historical Note

Former Rule 29. R20-4-529 recodified from R4-4-529 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-530. Repealed

Historical Note

Former Rule 30. R20-4-530 recodified from R4-4-530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-531. Repealed

Historical Note

Former Rule 31. R20-4-531 recodified from R4-4-531 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-532. Repealed

Historical Note

Former Rule 32. R20-4-532 recodified from R4-4-532 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-533. Reserved

R20-4-534. Insurance

A. A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read substantially as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE INSURANCE IN THE AMOUNT OF $ _____.

I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF $ _____.

B. A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read substantially as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF
$ _____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF $ _____.
I ATTEST THAT THE VALUE OF MY PROPERTY INSURED IN CONNECTION WITH THIS LOAN IS THE SUM OF
$ _____.

Historical Note
Former Rule 34. R20-4-534 recodified from R4-4-534 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-535. Reserved

R20-4-536. Repealed

Historical Note
Former Rule 36. R20-4-536 recodified from R4-4-536 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6 consisting of Section R4-4-601 repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

R20-4-601. Repealed

Historical Note
Former Rule 1; Former Section R4-4-601 repealed, new Section R4-4-601 adopted effective October 26, 1978 (Supp. 78-5). R20-4-601 recodified from R4-4-601 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-602. Applications

A. An applicant for a debt management company license shall send the Department an application on the form required by the Director. If the Director determines that a credit report is required as authorized under A.R.S. § 6-704(A), the applicant shall order a credit report from a credit reporting agency disclosing the credit history of the applicant's principals or managing agents and submit the credit report to the Department. A complete application shall include the credit report required by this Section and all of the following:

1. The surety bond required by A.R.S. § 6-704(B);
2. Fidelity bonds if required by the Director under A.R.S. § 6-704(D);
3. The nonrefundable application fee specified in A.R.S. § 6-126(A)(14);
4. An original license fee described in A.R.S. §§ 6-126(B), 6-126(D)(2), and 6-706;
5. A sample of the contract intended to be used by the applicant required by A.R.S. § 6-704(E):
6. Current financial statements as described in R20-4-604(A)(5);
7. A copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity;
8. The name and address information required under A.R.S. § 6-704(A); and
9. A background check, on the form required by the Department, for each of the applicant's principals, principal officers, trustees, partners, and managing agents.

B. A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Director.

C. A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Director. A debt management company shall apply separately to renew each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(D)(2).

D. The Department may require additional information the Director considers necessary in connection with an application under this Section.

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-602 recodified from R4-4-602 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-603. Reports

A. Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Director. A debt management company shall deliver its report to the Department on or before August 15.

B. Each debt management company shall notify the Department of any change in its ownership or in the names of its officers, directors, trustees, partners, or managing agents within 30 days of the change.

Historical Note
Adopted effective January 1, 1979 (Supp. 78-5). R20-4-603 recodified from R4-4-603 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-604. Records

A. A debt management company shall keep books, accounts, and records adequate to provide a clear and readily understandable

record of all its business activity. A debt management company may keep its books, accounts, and records as electronic records if the debt management company can generate all information and documentation required by this Section in the timeframe set by the Department for examination or other purposes. A debt management company's books, accounts, and records shall include:

1. A file for each account containing:
   a. A copy of all correspondence concerning the account;
   b. Evidence of the notice given to creditors of the debt management contract;
   c. A subsidiary ledger disclosing all financial transactions concerning the account;
   d. A copy of each written statement of account given to the debtor;
   e. The original budget analysis required under R20-4-607; and
   f. The original contract between the debt management company and the debtor, including all amendments.
2. A trust account general ledger, which is kept current daily, which reflects each deposit to and disbursement from the trust account.
3. Each reconciliation of the debt management company's trust account, prepared at least once a month.
4. A general ledger, kept current monthly, which reflects each financial transaction by the debt management company except those recorded in its trust account general ledger.
5. A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently if directed by the Director, which reflects the financial condition of the debt management company. The financial statement shall include:
   a. A balance sheet,
   b. A statement of income and retained earnings,
   c. A statement of changes in financial condition, and
   d. Appropriate footnotes that either:
      i. Explain entries in the documents listed in subsections (A)(5)(a), (b), and (c);
      ii. Contain material information not required or not reportable in documents listed in subsections (A)(5)(a), (b), or (c); or
      iii. Contain other disclosures required by generally accepted accounting principles.
6. A record of all litigation naming the debt management company as a party including:
   a. For pending litigation:
      i. A copy of the complaint;
      ii. A copy of any answer filed by the debt management company in response to the complaint; and
      iii. A copy of any motion filed by the debt management company; and
   b. For any litigation that is no longer pending, a copy of any judgment showing the settlement date, dismissal, or other final order disposing of the litigation.

B. All records required under this Section may be maintained at the debt management company's office in Arizona. A debt management company may keep its records outside this state if it:

1. Makes the records available to the Director, for examination or other purposes, in this state not more than three business days after demand; and
2. Allows its debtor customers to call toll free to obtain information from the records that are not available from the debt management company's office in Arizona.

C. Each debt management company shall preserve its books, accounts, and records for the period required by A.R.S. §§ 6-709(J) and 6-710(1).

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-604 recodified from R4-4-604 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-605. Reserved

R20-4-606. Reserved

R20-4-607. Budget Analysis

A. A debt management company shall not accept an account unless it first concludes that the debtor can reasonably meet the payments agreed upon by the debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.

B. The written budget analysis shall either be part of an application form or a separate document. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.

C. The budget analysis shall disclose the disposable income available for payment to the debt management company after the debtor pays their reasonable and necessary living expenses including taxes, insurance, child support, alimony, and residential rent or mortgage payments.

Historical Note

Adopted effective January 1, 1979 (Supp. 78-5). R20-4-607 recodified from R4-4-607 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-608. Reserved

R20-4-609. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-609 recodified from R4-4-609 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-610. Repealed

Historical Note

Adopted effective October 26, 1978 (Supp. 78-5). R20-4-610 recodified from R4-4-610 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-611. Advertising

A. A debt management company shall not use advertising, communication, or sales material that contains:

1. A false, misleading, or deceptive statement about the debt management company's services or charges. A statement is a violation of this Section if the person making the

statement does not state a material fact necessary to make the statement true, in light of the circumstances under which it is made;
2. A claim, direct or implied, that the debt management company consolidates debts or makes loans; or
3. A schedule of payments in any form.

B. A debt management company's advertising, communication, and sales material shall contain the following legend, conspicuously displayed in at least 12 point type and in bold print:
"NOT A LOAN COMPANY."

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-611 recodified from R4-4-611 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-612. Solvency and Minimum Liquid Assets

A. A debt management company shall not operate if it is insolvent. For purposes of this Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).

B. To determine compliance with A.R.S. § 6-709(A), a debt management company's liquid assets include funds held in its trust account. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by $2,500.00 the total of all its current business liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.

C. Except as otherwise provided by this Section, or in a specific ruling by the Director, a debt management company shall use generally accepted accounting principles to compute assets and liabilities.

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-612 recodified from R4-4-612 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-613. Reserved

R20-4-614. Reserved

R20-4-615. Reserved

R20-4-616. Reserved

R20-4-617. Reserved

R20-4-618. Reserved

R20-4-619. Reserved

R20-4-620. Repealed

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-620 recodified from R4-4-620 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2).

ARTICLE 7. ESCROW AGENTS

R20-4-701. Change in Location of Business

An escrow agent shall submit to the Director notice of any change in the location of the escrow agent's business. The escrow agent shall ensure that the Director receives the notice at least five days before the escrow agent conducts business at the new location. The escrow agent shall remit the fee required by A.R.S. § 6-126(A), to the Director with the notice of the location change.

Historical Note
Former Rule 1. R20-4-701 recodified from R4-4-701 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-702. Account Practices and Records

An escrow agent shall maintain records to enable the Director to reconstruct the details of each escrow transaction. The records shall include the following:
1. The seller's name and address;
2. The buyer's name and address;
3. The lender's name and address, if any;
4. The borrower's name and address, if any;
5. The real estate agent's name and address, if any;
6. Complete escrow instructions;
7. Records and supporting documentation for each receipt and disbursement made through the escrow; and
8. A copy of the escrow settlement.

Historical Note
Former Rule 2. R20-4-702 recodified from R4-4-702 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-703. Preservation of Records

An escrow agent shall preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction. An escrow agent may keep its records as electronic records if the escrow agent can generate all information and copies of documents required by A.R.S. § 6-831 within the timeframe set by the Department for examination or other purposes.

Historical Note
Former Rule 3. R20-4-703 recodified from R4-4-703 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-704. Subsidiary Account Records

An escrow agent shall maintain subsidiary account records that identify the funds deposited in each escrow account. The total of all credit balances in the subsidiary accounts shall always equal the balance of the general ledger control account.

Historical Note
Former Rule 4. R20-4-704 recodified from R4-4-704 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-705. Reserved

R20-4-706. Repealed

Historical Note

Former Rule 6. R20-4-706 recodified from R4-4-706 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4).

R20-4-707. Expired

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). R20-4-707 recodified from R4-4-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 411, effective September 30, 2014 (Supp. 15-1).

R20-4-708. Financial Condition and Resources

The Director shall consider the following criteria in evaluating an escrow agent's, other escrow agent's, or applicant's financial condition and resources under A.R.S. § 6-817:

1. Amount of positive net worth,
2. Amount of tangible net worth,
3. Amount of liquid assets,
4. Amount of cash provided by operations,
5. Ratio of debt to net worth,
6. Owner's personal financial resources,
7. Outside resources available,
8. Profitability,
9. Projected operating results,
10. Status as agent for a title insurance company, and
11. Sources of new business.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5385, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1949 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

ARTICLE 8. TRUST COMPANIES

R20-4-801. Definitions

In addition to the definitions provided in A.R.S. § 6-851, the following terms apply to this Article unless the context otherwise requires:

"Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company.

"Affiliate" has the meaning stated at A.R.S. § 6-801.

"Director" has the meaning stated at A.R.S. § 20-102.

"Governing instrument" means a document, and all its operative amendments, that:

Creates a trust and regulates the trustee's conduct,
Creates an agency relationship between a trust department or trust company and a client, or
Otherwise evidences a fiduciary relationship between a trust department or trust company and a client.

"Investment responsibility" means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

"Person" has the meaning stated at A.R.S. § 20-105.

"Trust asset" means any property or property right held by a trust department or trust company for the benefit of another.

"Trust department" means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

"Trust funds" means any money held by a trust department or trust company for the benefit of another.

"Trustor" means a person who creates or funds a trust, or both.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-801 recodified from R4-4-801 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-802. Reserved

R20-4-803. Reserved

R20-4-804. Repealed

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-804 recodified from R4-4-804 (Supp. 95-1). Repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

R20-4-805. Reports

A. Within 90 days following each December 31, each trust department and trust company shall file an annual report of trust assets with the Director on the form prescribed by the Director. The annual report shall include the current market value of all trust assets held by the trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by subsections R20-4-812(E) through (G).

B. Each trust company shall deliver a copy of its annual report and certificate of disclosure to the Director within 10 days of filing the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Director, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.

C. Each trust company shall notify the Director of any change in the directors or officers of the company within 10 days of the change. Any trust company with more than 25 officers may, after obtaining the Director's written approval, limit the officers covered by this subsection to those with substantial involvement in the trust company's corporate operations or in the trust company's trust business in this state.

Historical Note

Adopted effective September 1, 1977 (Supp. 77-3). R20-4-805 recodified from R4-4-805 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-806. Records

A. Every trust company shall keep its records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. A trust company may keep its records as electronic records if the trust company can generate all information and copies required by

this Section within the timeframe set by the Department for examination or other purposes.

B. A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the trust department or trust company, including the following:

1. A file for each account that includes:
   a. The governing instrument,
   b. All contracts and other legal documents,
   c. Copies of all correspondence,
   d. Accounting records disclosing all the financial transactions, and
   e. A listing of all the account's assets and liabilities.
2. An investment file for each account that includes:
   a. All original documentary evidence of the account's assets; or
   b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
   c. A record of the initial and annual investment reviews for the account.
3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the trust department or trust company for itself, distinguishing them from those relating to the trust department's or trust company's trust business;
4. Unaudited financial statements. A trust department or trust company shall produce these statements quarterly or more frequently when required by the Director. The financial statements shall include at least:
   a. A balance sheet; and
   b. A statement of income, expenses, and retained earnings.
5. Adequate records of all pending litigation that names the trust department or trust company as a party.

C. A trust department shall keep its fiduciary records separate and distinct from the trust department's corporate records.

D. A trust department or trust company shall keep records described in subsections (B)(1) and (2) for at least three years after closing an account. If litigation occurs concerning a particular account, the trust department or trust company shall keep that account's records, described in subsections (B)(1) and (2), for three years after the litigation is resolved.

Historical Note
Adopted effective September 1, 1977 (Supp. 77-3). R20-4-806 recodified from R4-4-806 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in Sections R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;
4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Director determines constitutes an unsafe or unsound business practice jeopardizing the trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or trust company's principal.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-807 recodified from R4-4-807 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-808. Administration of Fiduciary Powers

A. The board of directors and the officers share responsibility for the exercise of fiduciary powers by a trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.

B. A trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The trust department or trust company shall keep a written record of each new account approval and of the closing of each account. The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The trust department's or trust company's board shall ensure that an annual review of account assets is conducted for each account in which the trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.

C. A trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona to advise and inform the trust department or trust company on fiduciary matters and all other legal issues presented to the trust department or trust company by the conduct of its trust business.

Historical Note
Adopted effective June 30, 1977 (Supp. 77-3). R20-4-808 recodified from R4-4-808 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-809. Fiduciary Duties

A trust department or trust company shall perform all fiduciary duties imposed upon it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;
3. Provide complete and accurate information about the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
   a. The trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
   b. The governing instrument provides otherwise; or
   c. A different frequency is established by a lawful course of dealing before the effective date of this Section; and
4. Comply with all lawful provisions of the governing instrument.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-809 recodified from R4-4-809 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-810. Funds Awaiting Investment or Distribution

A. Trust funds held by a trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.

B. A trust department or trust company may keep trust funds in deposit accounts maintained by the trust department or trust company unless prohibited by law or by the governing instrument. The trust department or trust company shall set aside collateral security for all deposited trust funds under a third party's control. The collateral shall be the following types of securities, in any combination:
   1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
   2. Any other obligations fully guaranteed by the United States government as to principal and interest;
   3. Obligations of a Federal Reserve Bank;
   4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
   5. Readily marketable securities that either:
      a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
      b. Satisfy state pledging requirements under A.R.S. § 6-245(C).

C. The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-810 recodified from R4-4-810 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-811. Investment of Trust Funds

A. A trust department or trust company shall invest trust funds according to:
   1. The governing instrument; and
   2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7501 through 14-7512

B. A trust department or trust company shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-811 recodified from R4-4-811 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-812. Self-dealing

A. A trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
   1. Its own securities;
   2. Other types of property acquired from the trust department or trust company;
   3. Property acquired from the trust department's or trust company's directors, officers, or employees;
   4. Property acquired from the trust department's or trust company's affiliates;
   5. Property acquired from its affiliates' directors, officers, or employees; or
   6. Property acquired from other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.

B. A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
   1. If the trust department or trust company has authority under subsection (A), and
   2. If those securities are offered pro rata to all stockholders of the trust department or trust company.

C. A trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
   1. Its directors, officers, or employees;
   2. Its affiliates;
   3. Its affiliates' directors, officers, or employees; or
   4. Other individuals or organizations with an interest in the trust department or trust company if that interest might affect the trust department's or trust company's exercise of discretion to the detriment of its trust clients.

D. However, a trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
1. Its counsel has advised in writing that, by holding certain property, the trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
   a. The proposed sale or loan avoids the contingent or potential liability;
   b. Its board of directors authorizes the sale or loan by an action duly noted in the trust department's or trust company's minutes;
   c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
   d. The affected account is reimbursed, in cash, at no loss to that account; or
2. The Director requires or approves, in writing, the sale or loan to otherwise prohibited parties.

E. A trust department or trust company may sell trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

F. A trust department or trust company may loan trust property held in one account to another of its accounts if:
1. The transaction is fair to both accounts; and
2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

G. A trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
1. The transaction is fair to the borrowing account; and
2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-812 recodified from R4-4-812 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-813. Custody of Investments

A. A trust department or trust company shall keep each account's investments separate from its own assets. A trust department or trust company shall place each account's assets in the joint control of at least two officers or employees of the trust department or trust company designated in writing for that purpose by:
1. The trust department's or trust company's board of directors, or
2. One or more officers authorized by the trust department's or trust company's board of directors to make the designation.

B. A trust department or trust company shall either:
1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
2. Adequately identify each account's property in the trust department's or trust company's records.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-813 recodified from R4-4-813 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-814. Compensation

A. A trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. The trust department or trust company shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.

B. A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the trust department or trust company in the administration of an account.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-814 recodified from R4-4-814 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-815. Collective Investments

A. All collective investments made by a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871 and maintained by the trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the trust department or trust company acting as a fiduciary. A trust department or trust company shall not establish a common trust fund unless it first:
1. Prepares a written plan regarding the common trust fund; and
2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.

B. The plan shall describe the common trust fund's operational details, including a description of:
1. The trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund,
2. The manner for allocating the common trust fund's income and losses,
3. The criteria for admission to or withdrawal from participating in the common trust fund, and
4. The method for valuing assets in the common trust fund and the frequency of valuation.

C. A trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection (B), and shall provide a copy of the plan upon request.

D. The annual report required under R20-4-805(A) shall include all common trust funds operated by the trust department or trust company.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-815 recodified from R4-4-815 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by

final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

A. Any trust department that wants to surrender its trust powers shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust department has no remaining fiduciary duties, the Director shall notify the trust department that it no longer has authority to exercise trust powers.

B. Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Director shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.

C. After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Director's supervision shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust company has no further fiduciary duties, the Director shall notify the trust company that it no longer has authority to exercise fiduciary powers.

D. Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them canceled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company or its stockholders, directors, or officers.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-816 recodified from R4-4-816 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

Appendix A. Repealed

Historical Note

Appendix A repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

Appendix B. Repealed

Historical Note

Appendix B repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

ARTICLE 9. MORTGAGE BROKERS

R20-4-901. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-901 recodified from R4-4-901 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-902. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-902 recodified from R4-4-902 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-902 (A)(1) only applies to a person whose offers to make or negotiate a mortgage loan, as defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:

1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its mortgage lending activities; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage lending activities.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-903 recodified from R4-4-903 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-904. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-904 recodified from R4-4-904 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-905. Repealed

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-905 recodified from R4-4-905 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-906. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage broker with license from another state, or responsible individual for a mortgage broker licensed in another state;

6. Mortgage banker with license from another state, or responsible individual for a mortgage banker licensed in another state;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage broker or mortgage banker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6 Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-906 recodified from R4-4-906 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-907. Course of Study

A. A course of study shall be satisfactorily completed if the applicant has:
1. Attended at least 24 hours of class, and
2. Received a passing grade on the final exam.

B. A course of study shall meet all the following requirements:
1. The following items shall be submitted by the school to the Superintendent on an annual basis:
   a. Course materials;
   b. Class content outlines on a session-by-session basis; and
   c. Sample final exam.
2. The following subjects shall be taught:
   a. Mortgage, deed of trust, and security agreement law;
   b. Negotiable instrument law;
   c. Mortgage broker law;
   d. Escrow agent law;
   e. Recordkeeping requirements of R20-4-917;
   f. Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation requirements;
   g. Ethics;
   h. Principal and agent law;
   i. Arithmetical computations common to mortgage brokerage;
   j. Real estate lending principles;
   k. Real estate law;
   l. Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617, and Consumer Credit Protection Act, 15 U.S.C. 1601 through 1666j; and
   m. Securities law.
3. A final exam shall be given that substantially tests the student's knowledge of the subjects described above.

C. The Superintendent shall review the items submitted to the Department and determine within 60 days of submission whether the proposed course of study is satisfactory. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory, or if the Superintendent has not received the course materials, course content outlines, and sample final exam within the prior 13 months, the Superintendent may withhold or suspend approval.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-907 recodified from R4-4-907 (Supp. 95-1).

R20-4-908. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-908 recodified from R4-4-908 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-909. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-909 recodified from R4-4-909 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-910. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-910 recodified from R4-4-910 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-911. Qualified Replacement Responsible Individual

If a licensee chooses an individual to serve as a replacement responsible individual and that individual has not satisfactorily completed

the course of study required by A.R.S. § 6-903(B)(2) or passed the mortgage broker examination required by A.R.S. § 6-903(B)(3), and is not given the opportunity to do so prior to the expiration of the 90-day time period provided in A.R.S. § 6-903(F), but otherwise meets the requirements of A.R.S. § 6-903(B), the individual shall be qualified as a replacement responsible individual until the next course of study has been held and, if the person successfully completes the course of study, until the mortgage broker examination next following the completion of the course of study has been held and the results of the examination are available. If the individual fails to satisfactorily complete the course of study or fails the mortgage broker examination, the licensee shall then have a new 90-day time period within which to place itself under the active management of a qualified responsible individual. Notwithstanding the foregoing, a licensee shall have no longer than 180 days within which to place the license under the active management of a qualified responsible individual unless the Superintendent grants additional time to the licensee for good cause shown.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-911 recodified from R4-4-911 (Supp. 95-1).

R20-4-912. Restrictions on the Term of a Cash Alternative
If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-903(J), the certificate of deposit or investment certificate shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-912 recodified from R4-4-912 (Supp. 95-1).

R20-4-913. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-913 recodified from R4-4-913 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-914. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-914 recodified from R4-4-914 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-915. Requirements for a Person Intended to Oversee a Branch Office
A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-915 recodified from R4-4-915 (Supp. 95-1).

R20-4-916. Notification of Change of Address
If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within five business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the Department the license for the office changing addresses together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-916 recodified from R4-4-916 (Supp. 95-1).

R20-4-917. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system;
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage broker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied, etc.); and
   f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose, including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose, including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;

h. Date disbursed;
i. Disbursement's payee and purpose; and
j. Balance;

6. A file for each application for a mortgage loan containing:
   a. The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both;
   b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement, and escrow instructions to or with any depository;
   e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
   f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor;
   g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
   h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage broker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (B)(6) for the length of time provided in A.R.S. § 6-906. For the purposes of A.R.S. § 6-906, a mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
2. The date a licensee mails written notice to an applicant that the application has been denied, as required by federal law.

E. A licensee shall maintain all records described in this Section, and not included in subsection (D), for at least two years.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-917 recodified from R4-4-917 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-918. Repealed

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-918 recodified from R4-4-918 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-919. Deposit of Monies Received by a Mortgage Broker
All monies received by a mortgage broker which are required to be deposited into an escrow account with an escrow agent licensed pursuant to A.R.S. § 6-801 et seq. shall be so deposited by 5:00 p.m. on the next business day after receipt of the funds.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-919 recodified from R4-4-919 (Supp. 95-1).

R20-4-920. Requirements for the Testing Committee

A. No licensee shall submit more than five names as nominees to serve on the testing committee. The resumes of the nominees shall be included. The names and resumes shall be submitted to the Superintendent no later than August 1 of each even-numbered year. On or before September 30 of each even-numbered year, the Superintendent shall appoint four persons from the nominees submitted and one employee of the Department as members of the testing committee. A person may serve more than one two-year term. If the Superintendent does not find at least four persons from the list to be acceptable, the Superintendent shall solicit additional nominees from licensees.

B. In the event of a vacancy on the testing committee, the remaining members of the committee shall submit a list of nominees within 45 days of the vacancy to the Superintendent containing not less than two nominees for each vacancy. The Superintendent shall then appoint a nominee from the list to fill each vacancy for the remainder of the term. If the Superintendent does not find at least one person from the list to be acceptable to fill each vacancy, the remaining members of the committee shall, upon request, submit an additional list of nominees to the Superintendent.

C. The Superintendent may remove any member of the committee at any time without cause.

D. The committee shall review and revise questions on the test not less than once every two years. All questions used on the test shall first be submitted to and approved by the Superintendent.

E. The committee shall inform the applicant of the applicant's score on the test in writing within 30 days of administration of the test.

F. The handbook for mortgage brokers shall be updated by the committee as necessary to reflect changes in the law.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-920 recodified from R4-4-920 (Supp. 95-1).

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties; and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-921 recodified from R4-4-921 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-922. Determining Loan Amounts

In determining the amount of a mortgage loan pursuant to A.R.S. § 6-909(D) or (G), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties or compensation retained by the mortgage broker or its agents.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-922 recodified from R4-4-922 (Supp. 95-1).

R20-4-923. Delay or Cause Delay

A mortgage broker shall not be deemed to have delayed or caused delay if such delay occurs due to events outside the control of the mortgage broker.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-923 recodified from R4-4-923 (Supp. 95-1).

R20-4-924. Receipt and Disbursement of Monies

A licensee is not receiving or disbursing monies in servicing or arranging a mortgage loan if the licensee, at the request of the lender or servicing agent, on an infrequent basis, assists in the collection or servicing of a mortgage loan by receiving from the borrower a check or draft payable to the lender or servicing agent and forwarding such instrument to the lender or servicing agent not later than 5:00 p.m. on the next business day after receipt by the licensee. For the purposes of this rule, an infrequent basis means, with regard to a particular loan, for not more than 25% of the regularly scheduled payments of the mortgage loan during any calendar year.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-924 recodified from R4-4-924 (Supp. 95-1).

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-927. Conversion to Commercial Mortgage Broker License

A. Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period established by A.R.S. § 6-904.

B. The licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).

C. The licensee seeking conversion shall submit:

1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
2. The information and documents required by A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-928. Certificate of Exemption Application and Renewal

A. Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of $300.

B. A person holding a certificate of exemption shall pay a renewal fee of $150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. While the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business as a loan originator. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus $25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and

applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certificate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).

C. In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).

D. The following fees are payable to the Department:
1. To change the name of the federally chartered savings bank on a certificate of exemption: $250.00.
2. To change the responsible individual for the exempt entity: $250.00.
3. To issue a duplicate or replace a lost certificate of exemption: $100.00.
4. To change the address of the federally chartered savings bank on a certificate of exemption: $50.00.

Historical Note
New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE

R20-4-1001. Notice of Change of Location of Safe Deposit Repository

A. A corporation or association that moves a repository shall give written notice of the location change to the Director and to its customers.
1. A corporation or association shall provide notice of the location change to the Director by mailing the notice required under this subsection by first class mail no less than 30 days before the scheduled moving date. The corporation or association shall include a copy of the notice to customers required under subsection (B).
2. A corporation or association shall provide notice of the location change to its customers by:
   a. Publishing notice of the change of location in:
      i. An English language newspaper of general circulation in the county where the repository will be closed,
      ii. In a weekly newspaper for two consecutive publications, or
      iii. In a daily newspaper for three consecutive days; and
   b. Publishing the notice no more than 90 days, and no less than 30 days, before the scheduled moving date.

B. The corporation or association shall include all the following information in the notice:
1. The date the corporation or association intends to move the repository,
2. The earliest date a customer can remove contents and transact other business related to the move,
3. The latest date a customer can remove contents and transact other business related to the move,
4. The street address of the repository to be closed, and
5. The street address of the new repository.

Historical Note
Former Rule 1. R20-4-1001 recodified from R4-4-1001 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 5227, effective February 4, 2003 (Supp. 02-4). Preceding Historical Note entry corrected to read 2003 instead of 2002 (Supp. 03-1). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES

R20-4-1101. Capital Structure of Banks; Defined

"Capital structure" as the term is applied to banks under Article 2.1, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following reserves and capital accounts of the institution as stated in the institution's report of condition required by the supervisory banking authority for the year end next preceding the institution's bid for deposit:
1. Reserve for bad debt losses on loans,
2. Other reserves on loans,
3. Reserves on securities,
4. Capital notes and debentures,
5. Preferred stock – total par value,
6. Common stock – total par value,
7. Surplus,
8. Undivided profits, and
9. Reserve for contingencies and other capital reserves.

Historical Note
Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1101 recodified from R4-4-1101 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1102. Expired

Historical Note
Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1102 recodified from R4-4-1102 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 5, 2020 (Supp. 20-1).

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR

R20-4-1201. Scope of Article; Definitions

A. Scope. This Article, Title 6, Title 32, Chapters 9 and 36, and Title 44, Chapter 2.1 of the Arizona Revised Statutes govern administrative hearings before the Department. The Department shall use the authority of A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' procedural rules and this Article to govern the initiation and conduct of administrative hearings. In an administrative hearing, special procedural requirements in state statute or another Section in this Article shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' rules, or this Article. Except as otherwise provided in Section R20-4-1220 for rulemaking petitions, this Article does not apply to rulemaking or to investigative proceedings before the Director. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to administrative hearings.

B. In addition to the definitions provided in A.R.S. §§ 41-1001 and 41-1092, the following terms apply to this Article:

"Administrative Hearing" means an appealable agency action as defined by A.R.S. § 41-1092(3) or a contested case as defined by A.R.S. § 41-1001(5) subject to A.R.S. Title 41, Chapter 6, Article 10.

"Attorney General" means the Attorney General of Arizona, and the Attorney General's assistants and special agents.

"Department" means the Arizona Department of Insurance and Financial Institutions – Financial Institutions Division.

"Director" has the meaning stated at A.R.S. § 20-102.

"Party" has the meaning prescribed at A.R.S. § 41-1001(16) and includes any person or entity subject to the jurisdiction of the Department under A.R.S. Title 6, Title 32 - Chapter 9, Title 32 - Chapter 36, and Title 44 - Chapter 2.1.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1201 recodified from R4-4-1201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1202. Appearance and Practice before the Director for Administrative Hearings

A. A party may appear on their own behalf or through counsel.

B. When an attorney other than the Attorney General appears or intends to appear before the Director or the Department, they shall promptly disclose their name and contact information and the name and contact information of the party on whose behalf they intend to appear.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1202 recodified from R4-4-1202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1203. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1203 recodified from R4-4-1203 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1204. Filing; Service

A. A document filed by a party with the Department is filed on the date it is received by the Department as established by the Department's earliest stamped date on the face of the document or by some other method of affixing a received date by the Department.

B. If a party is represented by an attorney, service is effectuated by service upon the attorney unless additional service upon the represented party is required by an administrative law judge or the Department.

C. A document is served upon a party as provided for under A.R.S. § 41-1092.04 and Section R2-19-108. A party effectuating service is responsible for producing proof of service if requested by the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1204 recodified from R4-4-1204 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended to correct a typographical error in subsection (B) (Supp. 01-4). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1205. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1205 recodified from R4-4-1205 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1206. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1206 recodified from R4-4-1206 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1207. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1207 recodified from R4-4-1207 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1208. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1208 recodified from R4-4-1208 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Repealed by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1209. Answer to Notice of an Administrative Hearing

A. The Department may, in a notice of hearing, direct one or more parties to file a written answer to the allegations contained in the notice of hearing. Even if not directed to do so, any party to the proceeding may file an answer.

B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Department may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.

C. An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the allegations in the notice of hearing. An answering party who does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an allegation shall state that inability which shall have the effect of a denial. Any allegation not denied is admitted. A party who intends to deny only a part of an allegation, shall expressly admit as much of that allegation as is true and shall deny the remainder.

D. A party who fails to file an answer required by this Section within the time allowed is in default. The Director may resolve

the proceeding against a defaulting party. In doing so, the Director may regard any allegations in the notice of hearing as admitted by the defaulting party.

E. Defenses not raised in the answer are waived.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1209 recodified from R4-4-1209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1210. Stay Pending a Hearing

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Director stay an action or any part of an order that will become effective before a hearing. The Director may, in the Director's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Director grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1210 recodified from R4-4-1210 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1211. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1211 recodified from R4-4-1211 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Repealed by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1212. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1212 recodified from R4-4-1212 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1213. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1213 recodified from R4-4-1213 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1214. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1214 recodified from R4-4-1214 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1215. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1215 recodified from R4-4-1215 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1216. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1216 recodified from R4-4-1216 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1217. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1217 recodified from R4-4-1217 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1218. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1218 recodified from R4-4-1218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3).

R20-4-1219. Request for Rehearing or Review

A. Any party aggrieved by an administrative decision may file with the Director within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for the request.

B. A party filing a motion under this Section may amend the motion at any time before a response to the motion is filed. An amended motion tolls the time for filing a response and the time for rendering a decision on the motion.

C. A request for rehearing or review which is not timely filed is deemed waived for the purpose of judicial review.

D. A motion for rehearing or review shall specify which of the grounds listed in subsection (G) it is based upon and shall set forth the specific facts and laws in support of the motion. A motion may cite relevant portions of testimony from the hearing if a transcript is provided with the motion and may cite hearing exhibits by reference to the exhibit number. The motion shall specify the relief sought by the request, such as a different finding of fact, conclusion of law or order and may seek multiple forms of relief in the alternative. When a motion for rehearing or review is based on an affidavit, the moving party shall attach the affidavit to the motion.

E. A party may file a separate request for a stay of the Director's decision. Filing a stay request or a motion for rehearing or review does not stay an order filed by the Director. The Director may stay an order pending the resolution of a motion for rehearing or review.

F. Each party served with a motion for rehearing or review shall be permitted to file a written response within 15 days after the motion has been filed. Affidavits may be attached to and filed with a response. A response may cite relevant portions of testimony from the hearing if a transcript is provided with the

response and may cite hearing exhibits by reference to the exhibit number. The Director has the discretion to hear oral argument to consider a request for rehearing or review.

G. The Director may grant a motion for rehearing or review for any of the following causes:
1. Irregularity in the proceedings before the Department, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct by the Department, the administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary care;
4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing; and
7. The decision is not justified by the evidence or is contrary to law.

H. The Director may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (G). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.

I. The Director, within the time for filing a motion for rehearing, may without a motion for rehearing, order a rehearing for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.

J. The Director may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1219 recodified from R4-4-1219 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4).

R20-4-1220. Petition for Rulemaking Action

A. The following definitions apply in this Section.
1. "Petitioner" means a person who petitions the Department for Rulemaking action as authorized under A.R.S. § 41-1033(A).
2. "Rule" has the meaning stated at A.R.S. § 41-1001 and is enforceable by the Department.
3. "Rulemaking action" means the process for formulation and finalization of a new rule, or amendment or repeal of an existing rule.
4. "Substantive Policy Statement" has the meaning stated at A.R.S. § 41-1001, is advisory only, and is not enforceable by the Department.

B. Any person may petition the Department under A.R.S. § 41-1033(A) to either:
1. Make, amend, or repeal a final Rule; or
2. Review an existing agency practice or Substantive Policy Statement that the Petitioner alleges to constitute a Rule.

C. A person who files a petition pursuant to A.R.S. § 41-1033(A), shall include the following information in the petition:
1. The Petitioner's name and contact information;
2. The name and address of any organization the Petitioner represents;
3. Whether the Petitioner is petitioning the Department to:
   a. Make, amend, or repeal a final Rule; or
   b. Review an existing agency practice or Substantive Policy Statement that the Petitioner alleges to constitute a Rule;
4. A detailed explanation of Petitioner's basis for submitting the petition;
5. If the Petitioner is petitioning the Department to make a Rule, the language of the proposed new Section and the specific authority for the requested Rulemaking action;
6. If the Petitioner is petitioning the Department to amend an existing Rule, a citation to the existing Section to be amended, the language of the proposed Rule amendment, and the specific authority for the requested Rulemaking action;
7. If the Petitioner is petitioning the Department to repeal an existing Rule, a citation to the existing Section or subsection to be repealed, and an explanation of why the Rule should be repealed including, if applicable, how the Rule does not meet the requirements of A.R.S. § 41-1030;
8. If the Petitioner is petitioning the Department to review an existing agency practice that the Petitioner alleges to constitute a Rule, a description of the Department's practice, an explanation of how the Department's practice constitutes a Rule being enforced by the Department, the language of the proposed new Rule, and the specific authority for the requested Rulemaking action;
9. If the petitioner is petitioning the Department to review a Substantive Policy Statement that the Petitioner alleges to constitute a Rule, a citation to the Substantive Policy Statement, an explanation of how the Substantive Policy Statement is being enforced by the Department as a Rule, the language of the proposed new Rule, and the specific authority for the requested Rulemaking action; and
10. The Petitioner's dated signature.

D. The petitioner may submit additional supporting information, including:
1. Statistical data; and
2. A list of other persons and entities likely to be affected by the proposed Rulemaking action, with an explanation of the likely effects.

E. Within 60 days of the date the Department receives the petition, the Director shall send the petitioner a written decision indicating whether the Department is denying the petition or will initiate the requested Rulemaking action, with the reasons for the decision.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). R20-4-1220 recodified from R4-4-1220 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4262, effective September 12, 2001 (Supp. 01-3). Section repealed; new Section amended by final rulemaking at 28 A.A.R. 3620 (November 25, 2022), effective January 1, 2023 (Supp. 22-4). Subsections C(5) through (10), (D) and (E) omitted when codified in Supp. 22-4; the rule text has been published as promulgated at 28 A.A.R. 3620 (Supp. 24-1).

ARTICLE 13. LOAN ORIGINATORS

R20-4-1301. Scope of Article

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1302. Course of Study to Qualify for Licensure

A. The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).

B. An applicant for a loan originator license shall satisfactorily complete a course of study by:
1. Attending at least 20 hours of instruction, and
2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).

C. A pre-licensure course of study shall include 20 hours of instruction in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: Four hours;
5. The remaining eight hours should be comprised of instruction in:
   a. The obligations between principal and agent;
   b. The statutory and regulatory laws governing loan originators;
   c. Arithmetical computations common to mortgage lending;
   d. Principles of real estate lending;
   e. The purpose and effect of mortgages, deeds of trust, and security agreements;
   f. The terms and conditions of conforming and non-conforming residential mortgages;
   g. Real estate appraisal; and
   h. The principles of appraisal independence.

D. A continuing education course of study shall include eight hours of instruction each year in the following areas:
1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours;
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours;
3. Non-traditional mortgage product lending standards: Two hours;
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency and the obligations between principal and agent, and state privacy laws: One hour.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1303. Financial Responsibility

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:
1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of $100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1304. Fees

Loan Originator program fees:
1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(33): $350,
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): $150,
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. §§ 6-126(C)(13) and 6-991.04(G): $150,
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(34): $50,
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): $50,
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor,
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): $25 per day after the filing deadline.

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section renewed by emergency rulemaking and amended at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

R20-4-1305. Practice and Procedure

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the Nationwide Mortgage Licensing System and Registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).

Historical Note

New Section made by emergency rulemaking at 16 A.A.R. 839, effective April 27, 2010 for 180 days (Supp. 10-2). Section repealed; new Section made by renewed emergency rulemaking at 16 A.A.R. 2165, effective October 24, 2010 for 180 days (Supp. 10-4). Emergency expired April 21, 2011; new Section made by final rulemaking at 16 A.A.R. 2401, effective April 22, 2011 (Supp. 10-4). Since emergency expired, the emergency rulemaking has been removed. (Supp. 15-1).

ARTICLE 14. INVESTIGATIONS

R20-4-1401. Definitions

In this Article, unless the context otherwise requires:

1. "Examination" means reviewing an applicant's or licensee's operations, books, and records for any lawful purpose, including those listed in A.R.S. § 6-124(A).
2. "Investigation" means an inquiry, other than an examination, into the affairs of a licensed or unlicensed entity including a review of the entity's operations, books, and records, conducted by the Director for any lawful purpose, including those listed in A.R.S. § 6-124(A).
3. "Licensee" means a financial institution or enterprise licensed with the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1401 repealed, new Section R4-4-1401 renumbered from R4-4-1402 and amended effective August 14, 1991 (Supp. 91-3). Amended effective August 14, 1991 (Supp. 91-3). R20-4-1401 recodified from R4-4-1401 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1958 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1402. Repealed

Historical Note

Former Section R4-4-1402 renumbered to R4-4-1401, new Section R4-4-1402 adopted effective August 14, 1991 (Supp. 91-3). R20-4-1402 recodified from R4-4-1402 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4).

R20-4-1403. Subpoenas: Service; Amendment; Investigation or Examination not a Condition of the Director's Subpoena Power

The Director may serve a subpoena using any means intended to effectuate delivery of the subpoena. A Department employee, or an attorney or agent of the Attorney General's office, may accomplish service for the Director. The Director may amend a subpoena at any time, and may serve the amended subpoena as provided in this Section. Under A.R.S. §§ 6-123(3), 6-124(B), and 12-2212, the Director may compel testimony or document production, by subpoena or other means, regardless of whether an examination or investigation is in progress.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1403 repealed, new Section R4-4-1403 renumbered from R4-4-1407 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1403 recodified from R4-4-1403 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1958 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1404. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1404 recodified from R4-4-1404 (Supp. 95-1).

R20-4-1405. Background Information

A. In connection with an examination or investigation, the Director may investigate the following persons' background:

1. An applicant or a licensee, or a person whom the Director reasonably believes may be violating any statute or rule administered by the Director; and
2. An officer, director, agent, employee, partner, joint venturer, affiliate, or other person associated with a person described in subsection (A)(1), if the other person has or had any involvement in or control over the activities of the person described in subsection (A)(1).

B. In connection with an examination or investigation, the Director may require a person described in A.R.S. § 6-123.01(A) or (E) to submit a statement of personal history to the Department.

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Former Section R4-4-1405 repealed, new Section R4-4-1405 renumbered from R4-4-1409 and amended effective August 14, 1991 (Supp. 91-3). R20-4-1405 recodified from R4-4-1405 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 4653, effective December 6, 2003 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1958 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1406. Repealed

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1406 recodified from R4-4-1406 (Supp. 95-1).

R20-4-1407. Renumbered

Historical Note

Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1403 effective August 14, 1991

(Supp. 91-3). R20-4-1407 recodified from R4-4-1407 (Supp. 95-1).

R20-4-1408. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1408 recodified from R4-4-1408 (Supp. 95-1).

R20-4-1409. Renumbered

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). Renumbered to R4-4-1405 effective August 14, 1991 (Supp. 91-3). R20-4-1409 recodified from R4-4-1409 (Supp. 95-1).

R20-4-1410. Repealed

Historical Note
Adopted effective February 7, 1978 (Supp. 78-1). Repealed effective August 14, 1991 (Supp. 91-3). R20-4-1410 recodified from R4-4-1410 (Supp. 95-1).

ARTICLE 15. COLLECTION AGENCIES

R20-4-1501. Definitions

In this Article, unless the context otherwise requires:

1. "Account" means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client's behalf.
2. "Active Manager" means the person who is in active management of the conduct of the collection agency's business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. "Client" means a person who has hired a collection agency to collect a debt.
4. "Collection agency" has the meaning in A.R.S. § 32-1001(2).
5. "Contact" means to communicate with, and includes attempted communications.
6. "Credit bureau" or "credit reporting agency" means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. "Creditor" means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. "Debt" means a debtor's actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. "Debtor" means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. "Director" has the meaning stated at A.R.S. § 20-102.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1501 recodified from R4-4-1501 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1502. Applications

A. An applicant for a license shall complete and file an application, as required by the Department, by delivering the application to the Director, together with the following documents and payment:
1. The bond required by A.R.S. § 32-1021;
2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
3. A current financial statement in the form required by the Department;
4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and
5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.

B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.

C. A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Director before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.

D. An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Director within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
1. A bond that satisfies the requirements of A.R.S. § 32-1022;
2. A current financial statement as required by the Department;
3. A detailed description of the facts justifying the issuance of a provisional license; and
4. Evidence that the licensee notified the Director as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.

E. An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
1. A licensee's personal representative, or the personal representative's appointee, shall complete and file an application if the licensee, a natural person, has died;
2. The surviving partners shall complete and file an application if the licensee, a partnership, has dissolved;

3. A licensee shall complete and file an application if an active manager's employment was terminated.

F. An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."

G. The Director may require additional information the Director considers necessary in connection with any application under this Section.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1502 recodified from R4-4-1502 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1503. Reports

A collection agency shall notify the Director in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than 10 days after the change. With the notice, the collection agency shall provide the Director with a Statement of Personal History for each new officer, director, partner, or active manager on a form obtained from the Department.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1503 recodified from R4-4-1503 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1504. Records

A. A licensee may keep its books, accounts, and records as electronic records if the licensee can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:

1. Records or books of account listing all clients' accounts. Each account shall reflect its true condition at each calendar month's end, and shall include:
   a. The client's name and address;
   b. Each debtor's name worked for collection in that month;
   c. The amount, description, and date of each debit and each credit to the account; and
   d. The balance due to, or owing from, the client.
2. A record and history of each debt for collection that clearly shows:
   a. The debtor's name;
   b. The debt's principal amount;
   c. The interest charged or collected;
   d. The amount, and description, of any other charges;
   e. The amount, and date, of each payment received or collected; and
   f. The current balance due on the debt.
3. An original of each written contract between the licensee and a client, including any contract amendments.
4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Director.
5. The licensee's trust account reconciliation, prepared at least once a month.
6. Books, records, and files maintained so that the Director can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.
8. A record of fictitious names used by the agency's debt collectors as required by R20-4-1520.

C. A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.

D. A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Director demands the records.

E. A licensee shall retain the records required by this Section for the following periods:

1. A licensee shall retain all records described in subsections (B)(1), and (B)(3) through (8) for at least seven years following their creation.
2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1504 recodified from R4-4-1504 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1505. Trust Account

A. A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account at a federally insured depository institution in Arizona. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a federally insured depository institution in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:

1. Paid over to a client, or
2. Otherwise paid as provided in this Section.

B. A licensee shall pay funds from the trust account either:

1. By prenumbered printed checks, or
2. By electronic payment.

C. A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commin-

gle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.

D. A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-307, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.

E. A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.

F. A licensee shall not pay funds from its trust account except as:
1. Provided in this Section,
2. Expressly authorized in its contract with a client, or
3. Authorized in writing by the Director.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1505 recodified from R4-4-1505 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

A. A collection agency organized as a corporation shall file with the Director a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Director, an officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.

B. A collection agency organized as a corporation shall file with the Director a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

C. A collection agency not organized as a corporation shall file with the Director a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1506 recodified from R4-4-1506 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1507. Representations of Collection Agency's Identity

In all communications with debtors, either orally or in writing, all the following rules apply:
1. A collection agency shall represent itself as a collection agency,
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not,
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency, and
4. A collection agency shall not directly or indirectly claim to be a law firm.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1507 recodified from R4-4-1507 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1508. Representations of the Law

A collection agency shall not:
1. Misrepresent the state of the law to a debtor;
2. Send a debtor written material that simulates legal process; or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1508 recodified from R4-4-1508 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

A. A collection agency shall not threaten to collect, or attempt to collect, an attorney's fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor's contract with the collection agency's creditor client.

B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.

C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.

D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.

E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in the collection agency filing the lawsuit against the debtor.

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1509 recodified from R4-4-1509 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1510. Representations as to Rights Waived or Rem-

edies Available

A. A collection agency shall not inform a debtor that:
1. The debtor waives any legal right or legal defense by a failure to contact the collection agency, and
2. The collection agency has the power or right to bypass the legal process.

B. A collection agency shall not misrepresent the remedies available to the collection agency.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1510 recodified from R4-4-1510 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1511. Prohibition of Harassment

A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.

B. A collection agency shall not use written or oral communications that ridicule, disgrace, or humiliate any person, or tend to ridicule, disgrace, or humiliate any person.

C. A collection agency shall not state, imply, or tend to imply, in written or oral communications, that any person is guilty of fraud or any other crime.

D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.

E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1511 recodified from R4-4-1511 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1512. Contacts with Debtors and Others

A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.

B. A collection agency shall not threaten to or contact a third party, including a debtor's friend, relative, neighbor, or employer and:
1. Inform the third party of the debt;
2. Ask the third party to pressure the debtor into paying the debt; or
3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.

C. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1512 recodified from R4-4-1512 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1513. Cessation of Communication with the Debtor

A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through the debtor's lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.

B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
1. Refuses to pay the debt, or
2. Wants the collection agency to stop all further communication with the debtor.

C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
1. The collection agency has stopped trying to collect the debt, or
2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.

D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). Amended effective December 18, 1979 (Supp. 79-6). R20-4-1513 recodified from R4-4-1513 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1514. Disclosure of Information to Debtor

A. Within five days after the initial communication with the debtor, a collection agency shall obtain and be able to inform the debtor of:
1. The name of the creditor;
2. The time and place of the creation of the debt;
3. The merchandise, services, or other value provided in exchange for the debt; and
4. The date when the account was turned over to the collection agency by the creditor.

B. A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).

C. At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978

(Supp. 78-6). R20-4-1514 recodified from R4-4-1514 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1515. Aiding and Abetting

A collection agency shall not help or encourage, directly or indirectly, any person to evade or violate any provision of:

1. This Article, or
2. A.R.S. Title 32, Chapter 9.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1515 recodified from R4-4-1515 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1516. Advertising

A collection agency shall not use any form of communication to state or imply that the collection agency is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1516 recodified from R4-4-1516 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1517. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1517 recodified from R4-4-1517 (Supp. 95-1). Section repealed by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2).

R20-4-1518. Agreements with Clients

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court, or to practice law in any other way, is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1518 recodified from R4-4-1518 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1519. Licensee Names and Control

A. The Department shall not issue a license with a name that is:

1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
2. Descriptive of any business activity that the applicant does not actually conduct;
3. The same as, or similar to, the name of any existing collection agency, or
4. Otherwise deceptive or misleading.

B. The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the existing collection agency.

C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1519 recodified from R4-4-1519 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1520. Representations of Collection Agency Employees' Identity or Position

A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:

1. Misrepresent the person's true position with the collection agency;
2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law;
3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee; or
4. Claim to be, or imply that the person is, any other third party.

B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.

C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:

1. The true name of each debt collector that uses a fictitious name;

2. Each fictitious name used by the debt collector, together with the dates when the name is used; and
3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1520 recodified from R4-4-1520 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1521. Duty of Investigation

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney upon request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

1. The debtor has been misidentified,
2. The debt has been paid,
3. The debt has been discharged in bankruptcy, or
4. Based on any other reasonable claim, the debt is not owed.

Historical Note

Adopted effective December 18, 1979 (Supp. 79-6). R20-4-1521 recodified from R4-4-1521 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1331, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 29 A.A.R. 1961 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1522. Reserved

R20-4-1523. Reserved

R20-4-1524. Reserved

R20-4-1525. Reserved

R20-4-1526. Reserved

R20-4-1527. Reserved

R20-4-1528. Reserved

R20-4-1529. Reserved

R20-4-1530. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective December 6, 1978 (Supp. 78-6). R20-4-1530 recodified from R4-4-1530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4742, effective November 13, 2000 (Supp. 00-4).

ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS

R20-4-1601. Definitions

In addition to the definitions provided in A.R.S. § 6-141, the following terms apply to this Article unless the context otherwise requires:

"Acquiring party" means a person who intends to acquire control of a bank, trust company, savings and loan association, or controlling person under A.R.S. Title 6, Chapter 1, Article 4.

"Bank" has the meaning stated in A.R.S. § 6-101.

"Director" has the meaning stated in A.R.S. § 6-101(7).

"Savings and loan association" means a person required to possess a permit issued by the Director under A.R.S. Title 6, Chapter 3.

"Target company" means a bank, savings and loan association, trust company, or controlling person to be acquired by an acquiring party.

"Trust company" has the meaning stated in A.R.S. § 6-851.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1601 recodified from R4-4-1601 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

A. An applicant seeking approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. Title 6, Chapter 1, Article 4, shall file with the Director copies of all application documents filed with federal regulatory agencies in connection with the planned acquisition of control.

B. As used in this subsection, "executive officer" includes the chairman of the board, president, each vice president, cashier, secretary, treasurer, and every other person who participates in major policymaking functions of the applicant. Under A.R.S. § 6-145(A), an applicant seeking approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. Title 6, Chapter 1, Article 4 shall supply all information the Director requires under this subsection. The Director may require an applicant to supplement or amend its application based on issues raised by the initial submission. The initial application shall consist of the following items:

1. A copy of the signed purchase agreement;
2. The applicant's audited financial statement;
3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party;
4. Each executive officer's and each director's personal financial statement;
5. A full set of fingerprints for each executive officer and each director; and
6. A copy of each executive officer's and each director's driver's license.

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1602 recodified from R4-4-1602 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1603. Repealed

Historical Note

Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1603 recodified from R4-4-1603 (Supp. 95-

1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

R20-4-1701. Definitions
In addition to the definitions provided in A.R.S. § 6-321, the following terms apply to this Article unless the context otherwise requires:

"Applicant" means an out-of-state financial institution that intends to acquire control of an in-state financial institution.

"Director" has the meaning stated in A.R.S. § 6-101(7).

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1702. Notice to the Director of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter

A. An applicant shall give written notice of an acquisition to the Director in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Director not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Director may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.

B. An acquired in-state financial institution shall surrender, by delivery to the Director, all permits and certificates issued by the Director within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand-alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1703. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

A. An applicant shall transmit to the Director one copy of each notice and the publisher's affidavit of publication required by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

B. An applicant shall provide the Director copies of any protests known to have been received by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1705. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

ARTICLE 18. MORTGAGE BANKERS

R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a "mortgage banking loan" or a "mortgage loan," as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, mortgage lending activities, or both.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1802. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited toward qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage banker or mortgage broker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6. Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent at least five business days before the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-1806. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied); and
   f. Name of loan officer;

2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;
   h. Date disbursed;
   i. Disbursement's payee and purpose; and
   j. Balance;
6. A file for each application for a mortgage banking loan or a mortgage loan containing:
   a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
   b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement and escrow instructions to or with any depository;
   e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
   f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;
   g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.

E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1807. Providing Copies of Records
For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker, the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:
1. The closing instructions;
2. Any applicable rescission notice;
3. The HUD-1 settlement statement;
4. The final truth-in-lending disclosure;
5. The note;
6. The executed deed of trust or mortgage; and
7. Each assignment of beneficial interest by the mortgage banker licensee.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1808. Authorization to Complete Blank Spaces
An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1809. Determining Loan Amounts
The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties, or compensation retained by a mortgage banker or its agents.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1810. Delay or Cause Delay
A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1811. Impound Account
The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner
A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1813. Conversion to Mortgage Broker License
Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.

Historical Note
New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1901. Exemption for an Institutional Investor

A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:
1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
2. The claimant does so in the regular course of business;
3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
5. The claimant makes only loans of more than $250,000.

B. If a claimant makes even one commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a "commercial mortgage loan," as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its commercial mortgage lending activities;
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's commercial mortgage lending activities.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1903. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience towards the

three years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
5. Lender's branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
9. Attorney certified by any state as a real estate specialist.

B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond
A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office
A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One Person may oversee more than one branch.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1906. Notification of Change of Address
If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within five business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1907. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied); and
   f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;
   h. Date disbursed;
   i. Disbursement's payee and purpose, and
   j. Balance.

6. A file for each application for a commercial mortgage loan containing:
   a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
   b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement, and escrow instructions to or with any depository;
   e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
   f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
8. Copies of governmental or regulatory reviews;
9. If the licensee is a not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from the applicant; or
2. The date a licensee mails written notice to an applicant that an application has been denied; or
3. The date of a licensee's internal memorandum closing a loan file.

E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:
1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing party, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

E-6.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 3, Articles 2, 3, 5, 7, & 9

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 3, Articles 2, 3, 5, 7, and 9

Summary

This Five-Year Review Report (5YRR) from the Department of Transportation (Department) covers twenty (20) rules Title 17, Chapter 3, Articles 2, 3, 5, 7, 9 related to Highways. Specifically, these rules cover the following articles:

- **Article 2** - Management of Contractor Bidding
- **Article 3** - Relocation Assistance
- **Article 5** - Highway Encroachments and Permits
- **Article 7** - Highway Beautification
- **Article 9** - Highway Traffic Control Devices

The Department did not complete its prior proposed course of action in the 5YRR approved by the council on February 4, 2020 as the Department did not believe that they had a sufficient justification for an exception to the rulemaking moratorium. The Department has stated that the prior proposed amendments were to improve clarity, conciseness, and understandability so the Department did not believe there was a sufficient level of urgency in amending the rules. The Department prioritized rule amendments resulting from legislative changes during this time.

The 2020 Report indicated certain rules were not effective in achieving its objective, certain rules were not enforced as written, certain rules were not consistent with other rules and statutes, and certain rules were not clear, concise, or understandable. The rule lacking statutory authority concerned charging a fee for outdoor advertisements that were erected prior to the issuance of a permit. The Department does not enforce this rule because of the lack of authority and instead they will allow for the owner of the sign to apply for a permit, if a permit is denied or application not filed then the sign will be removed in accordance with A.R.S. § 28-7906.

Proposed Action

The Department has indicated that the same issues that were identified in the 2020 report exist and are proposing to make the same changes, along with some additional amendments to ensure that the rules will be more clear, concise, and understandable. These changes are detailed below. The Department anticipates having a final rulemaking to the Council by September 2025. The Department has been in contact with their policy advisor and intends on submitting a formal request to begin rulemaking depending on the approval of the 5YRR by the Council.

1. Has the agency analyzed whether the rules are authorized by statute?

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 Department indicates that the economic impact of each of these rules has been the same as estimated in the economic impact statement prepared in the last amendment of each rule. Stakeholders include the Department, contractors seeking eligibility to bid on certain advertised projects involving the construction or reconstruction of transportation facilities and displaced people, businesses, or farm operations affected by a program or project. Currently, there are 125 prequalified contractors interested in doing business with the Department.

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 states that in rulemaking, it routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or industry. Therefore, the Department has determined that the benefits of all rules in this Chapter outweigh the costs.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. <u>Has the agency analyzed the rules' clarity, conciseness, and understandability?</u>

The Department indicates the rules are clear, concise, and understandable except for the following:

- R17-3-202
    - Subsection (B)(1) could be improved by clarifying what types of currency shall be stated in financial statements and expanding the length of time a contractor is prequalified.
    - Subsection (E)(1) could be improved by submitting both individual and combined financial statements, adding a requirement that the statements must cover a fiscal year absence a showing of good cause, and modify how working capital counts against calculating adjusted current assets.
    - Subsection (E)(3) could be improved by expanding the maximum prequalification limit for contractors
    - Subsection (F)(4) could be improved by increasing the prequalified amount a contractor can receive
    - Subsection (G)(1) could be improved by including a reference to the Department's administrative hearing rules in 17 AAC 1, Article 5.
- R17-Article 3
    - All rules in Article 3 need to be updated to incorporate by reference 89 FR, 36908, May 3, 2024
- R17-3-302
    - Subsection (A) and (C) could be improved by removing the word federal because the terms describe funding which would only come from the Department and not the federal government.
- R17-3-501
    - Could be improved by amending definitions by removing unnecessary language and removing references to statutory defined terms that have been renumbers
- R17-3-507
    - Subsection (A) could be improved by removing unnecessary references to statute
    - Subsection (C) could be improved by making more clear and concise and adding a reference to the Departments administrative review process found in 17 AAC 1 Article 5 to the end of subsection (C)(3)
- R17-3-701
    - Subsection (A) could be improved by including reference to other definitions found in A.R.S. § 28-7901, and the Department has identified 9 definitions that could be improved by removing unclear language.
    - Subsection (B) could be improved by removing unnecessary subsections, clarify the permit application process, remove language that is more suited for Department policy, and remove language that suggests there is a fee for non-compliance.
    - Subsection (C) could be improved by removing unnecessary subsections, clarify how to obtain an encroachment permit, bring language in line with A.R.S. § 28-7901 and § 28-7906, and include references to other Department rules.

    - Subsection (D) could be improved by removing unnecessary subsections, correcting typographical errors, and make corrections to bring in line with Department policies.
- R17-3-701.01
    - Needs to be amended to correct statutory references and to define additional terms for clarity.
- R17-3-703
    - Could be improved by both adding and amending statutory references
- R17-3-901
    - Could be improved by revisiting definitions concerning how to define areas of certain population sizes.
- R17-3-902
    - Could be improved by reflecting statutory changes to various definitions

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- R17-3-502
    - The Department states it is consistent with and enforces all 34 sections of the federal regulations because the regulations are incorporated by reference. However, the Department indicates that in order to determine the maximum statutory benefit allowed in Arizona, the Department must use limits provided under Title 28, Arizona Revised Statutes, Chapter 20, Article 7, which were amended by Laws 2014, Ch. 28. §§ 6 through 8 which were amended by Laws 2014, Ch. 28. §§ 6 through 8 and increased the maximum statutory limit.
- R17-3-701
    - For Subsection (B) the Department has indicated that the subsection is not consistent with A.R.S. § 28-7906 because it states that the Department charges a fee if an outdoor advertisement is not in compliance and not issue a permit prior to the erection of an advertisement. The Department does not enforce this subsection because it lacks the authority to charge a fee under § 28-7906.
    - For Subsection (C), the Department has indicated that the terminology used in the rules do not conform with terminology as designated by the Federal Highway Association.
- R17-3-701.01
    - The statutory reference to A.R.S. § 28-2102(A)(4) and (5) are incorrect because the statutory reference has changed to A.R.S. § 28-7912.
- R17-3-703
    - The statutory reference for the definition of "unzoned commercial or industrial area," has been amended from A.R.S. § 28-7901(11) to A.R.S. § 28-7901(14).

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- R17-3-701
    - Subsection (A) could be improved by adding a definition of what constitutes a complete application
    - Subsection (B)(12) requires an applicant to erect a sign 120 days after a permit has been installed with a 60 day extension possible, the Department believes the rule could be improved by just allowing for 180 days and removing the administrative effort of tracking both the initial 120 days and the 60 day extension.
    - Subsection (C) and (D) could be improved by encompassing modern technologies and being more in line with federal regulations for outdoor advertising.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are generally enforced as written with the exception of the following:

- R17-3-301
    - The Department states it enforces all 34 sections of the federal regulations as incorporated by reference. However, the Department indicates that in order to determine the maximum statutory benefit allowed in Arizona, the Department must use limits provided under Title 28, Arizona Revised Statutes, Chapter 20, Article 7, which were amended by Laws 2014, Ch. 28. §§ 6 through 8 which were amended by Laws 2014, Ch. 28. §§ 6 through 8 and increased the maximum statutory limit.
- R17-3-502
    - Subsection (D) is not enforced because the Department does not have a mechanism to enforce. Subsection D requires a new owner of an encroachment to apply for an encroachment permit within 30 days of purchase. The Department is not involved in the sale of these encroachments and does not have a mechanism in place to notify new owners. The Department does currently notify existing owners at the time of the issuing of the permit that they need to notify new owners if the land where the encroachment exists is sold. The Department is exploring potential electronic solutions and plan on amending the rule once a solution is found.
- R17-3-701
    - Subsection (B)(10) is not enforced because the Department does not have the statutory authority to charge a fee for a sign erected prior to the issuance of a permit. The Department instead allows these unlawful sign owners to apply for a permit and if denied a permit then the owner is responsible for cost to remove, which is allowed under A.R.S. § 28-7909.

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 Department indicates that the rules are not more stringent than corresponding federal law. The Department has stated that the following federal laws and rules apply to the subject matter of the Department rules. Title 23, U.S.C. 109(d), 23 U.S.C. 111(b), 23 U.S.C. 131, 23 U.S.C. 156, 23 U.S.C.402, 23 CFR 1.23(b), 23 CFR 655 Subpart F, 23 CFR 655.603, 23 CFR Part 750, 49 CFR 1.85, FHWA Order 5160.1A, IRC Sec. 170(c)(1), 49 CFR Part 24 Subparts A, C, and E, and Appendix A, 42 U.S.C. 4601, et seq, 23 U.S.C. 136

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?

The Department has indicated that they do issue general permits and are in compliance with A.R.S. § 41-1037

11. Conclusion

This 5YRR from the Department relates to twenty (20) rules in Title 17, Chapter 3, Articles 2, 3, 5, 7, 9 related to Highways. The Department is proposing to update the rules to ensure the rules are meeting their objective, to ensure the rules are consistent with other statutes and rules, to ensure that the rules can be enforced as written, and to improve the rules clarity, conciseness, understandability, and effectiveness. The Department has identified several rules that can be improved in these above areas. Many of these amendments were identified and proposed in the Department's previous 5YRR proposed course of action.

The Department indicates that the reason for not completing the prior course of action was based on the need to prioritize rulemaking for rules that have been impacted by recent legislation. The Department ultimately determined these rules were noncritical and did not have a significant impact on the enforceability of the rules. The Department has informed Council staff that they have been in contact with their policy advisor and are planning to request permission to engage in rulemaking upon the Council's approval of this 5YRR. The Department anticipates submitting a Notice of Final Rulemaking to the Council by September 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

September 27, 2024

VIA EMAIL: grrc@azdoa.gov

Ms. Jessica Klein, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Arizona Department of Transportation Five-year Review Report - 17 A.A.C. 3, Articles 2, 3, 5, 7, and 9

Dear Ms. Klein:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering rules located under 17 A.A.C. Chapter 3, Articles 2, 3, 5, 7, and 9, which is due to the Council on September 30, 2024. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301.

The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure

Governor's Regulatory Review Council

Five-Year-Review Report

Arizona Department of Transportation

17 A.A.C. Chapter 3, Department of Transportation - Highways, Articles 2, 3, 5, 7, and 9

1. Authorization of the rule by existing statutes

General Statutory Authority:

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 for these rules. This authority allows the Department to adopt rules for the collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent abuse and unauthorized use of any highways or routes under the jurisdiction of the Department.

The Arizona State Transportation Board has general rulemaking authority for the administration of its powers, duties, and responsibilities as provided under A.R.S. § 28-305.

Specific Statutory Authority:

R17-3-201 R17-3-202 R17-3-203 R17-3-204	As required under A.R.S. § 28-7365, R17-3-202 provides the prequalification procedures developed by the Department and the Arizona State Transportation Board for use by contractors seeking eligibility to bid on certain advertised projects involving the construction or reconstruction of transportation facilities. A.R.S. § 41-2501(K) specifically exempts the State Transportation Board and the Department from strict adherence to the Arizona Procurement Code in relation to the subject matter contained in these rules. However, all procurement activities conducted by the Department under these rules are subject to A.R.S. Title 28, Chapter 20, and 2 CFR 200.317. A.R.S. § 28-7363(E) provides that, *"[to] ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the director, in conjunction with the appropriate and affected professionals and contractors, may adopt procedures for procuring a project using the design-build method of project delivery.*" Additionally, A.R.S. § 28-6923(M)(2) references "*contractors who are prequalified by the Department to perform a contract…*". 2 CFR 200.317 provides that, *"[w]hen procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including sub-recipients of a State, must follow the procurement standards in §§ 200.318 through 200.327."*

R17-3-301 R17-3-302 R17-3-303 R17-3-304	A.R.S. § 28-7148 provides specific statutory authority for the Department to adopt rules for the administration of relocation payments and assistance to displaced persons, businesses, or farm operations affected by a program or project undertaken by the Department under A.R.S. §§ 28-7141 to 28-7149 and 28-7152, and that involves state financial assistance. These rules are also consistent with federal statutes regarding the administration of relocation assistance on federal and federally-assisted programs and projects where the U.S. Department of Transportation has designated the Department as the lead agency for the administration of programs and projects subject to 42 U.S.C. 4601 through 4655, 5304, and 12705(b).
R17-3-501 R17-3-502 R17-3-503 R17-3-504	A.R.S. §§ 28-7045, 28-7053, and 28-7054 provide specific statutory authority for the Director to grant prior authorization in writing to any person who demonstrates a valid and reasonable need to acquire access to a public highway right-of-way under the jurisdiction of the Department before placing or maintaining any encroachment or obstruction on, making any use of, or otherwise occupying a public highway right-of-way for any purpose other than for authorized public travel, communication, transportation or transmission.
R17-3-701 R17-3-701.01 R17-3-702 R17-3-703 R17-3-704	Specific statutory authority for these rules is as provided under A.R.S. §§ 28-7908 and 28-7909, the federal and state agreement authorized under A.R.S. § 28-7907, and the authorizing federal statutes and regulations provided under 23 U.S.C. 131 and 23 CFR 750 for outdoor advertising and junkyard control.
R17-3-901 R17-3-902 R17-3-903 R17-3-904	A.R.S. § 28-7311 provides specific statutory authority for the Department to operate a rural and an urban logo sign program and requires that the Department adopt rules to implement the logo sign programs.

2. The objective of each rule:

The stated objectives for each rule maintained by the Department under 17 A.A.C. 3, are as follows:

Article 2. Management of Contractor Bidding

R17-3-201	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article, and to describe the Department's Contractor Prequalification Board.
R17-3-202	To provide a uniform prequalification process for use by contractors seeking eligibility to bid on projects advertised by the Department that will involve construction or reconstruction of state transportation facilities. The prequalification process allows the Department and its Contractor Prequalification Board to verify each contractor's experience, organization, and other pertinent and material facts that determine a

	bidder's qualifications for performing work of the type and magnitude required for transportation projects.
R17-3-203	To provide the factors and processes used by the Contractor Prequalification Board for either reducing a previously approved prequalification amount or disqualifying a contractor from bidding.
R17-3-204	To provide for the confidentiality of a contractor's prequalification file and to clarify which entities are permitted access to the confidential files.

Article 3. Relocation Assistance

R17-3-301	To provide the public with official citations to the regulations needed to gain a general understanding of how the Department has implemented certain provisions of the federal Uniform Relocation Assistance Act as applicable to programs and projects administered by the Department with state-level funding.
R17-3-302	To clarify the Department's intended meaning for certain terms and phrases contained in 49 CFR 24.2, which were incorporated by reference as amended here for applicability to the relocation assistance program administered by the Department in this state.
R17-3-303	To inform the public about the state's eviction for cause statutes, as applicable to the Department's process for administering its relocation assistance program in this state.
R17-3-305	To inform the public about the amendments to the replacement housing payment provisions for homeowner occupants.

Article 5. Highway Encroachments and Permits

R17-3-501	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-3-502	To inform the public that any person who seeks an encroachment upon a state highway right-of-way shall first apply for and receive permission from the Department in the form of an encroachment permit, and to clarify which types of encroachments are either authorized or unauthorized.
R17-3-503	To specify that any person or entity, other than the Department, seeking to encroach upon a state highway right-of-way for access, landscaping, or utility installation shall first apply to the Department for an encroachment permit, and to clarify who may apply for an encroachment permit involving access, landscaping, and utility installation.
R17-3-504	To provide the general application requirements for obtaining an encroachment permit.

R17-3-505	To provide the requirement that an application for an encroachment permit shall include the supporting documentation necessary for the Department to properly analyze the proposed encroachment's impact on any state highway or right-of-way.
R17-3-506	To provide the requirements and responsibilities a permittee shall follow once an encroachment permit is issued.
R17-3-507	To inform the public of the factors the Department may use when determining whether to approve or deny an encroachment permit application, and to establish that an applicant has the right to appeal the Department's decision if an encroachment permit application is denied.
R17-3-508	To inform the public of the types of encroachment activities that are unauthorized, the requirement for removal of unauthorized encroachments, and the remedies for enforcement and violation.
R17-3-509	To inform the public that an encroachment permit applicant is entitled to a hearing if the Department denies the application or determines that the proposed encroachment is unauthorized.

Article 7. Highway Beautification

R17-3-701	(A). To present the meaning of specialized terms used by the Department in this Article to describe outdoor advertising signs and matters relating to outdoor advertising signs. (B). To provide the public with the information and procedures required of an applicant seeking permission from the Department to erect an outdoor advertising structure. (C). To provide the public with information on the Department's authority and obligation to maintain control of outdoor advertising activities conducted in close proximity to any highway under the jurisdiction of the Department, and to ensure that such activities do not adversely affect the efficient operation of transportation facilities throughout the state. (D). To provide the public with information regarding the standards that must be followed when placing signs on any highway right-of-way under the jurisdiction of the Department.
R17-3-701.01	This rule implements federal requirements to ensure that a local jurisdiction does not create commercial or industrial zoning merely to allow outdoor advertising.
R17-3-703	This rule describes the Department's responsibility to ensure effective control of junkyards established or maintained within 1000 feet of an Interstate or Federal-aid

	primary highway system as required under 23 CFR 751 and A.R.S. Chapter 23, Article 2.

Article 9. Highway Traffic Control Devices

R17-3-901	To define terms relating to highway signage for colleges and universities and to explain the process a college or university may use to request the placement of such signs on any highway under the jurisdiction of the Department.
R17-3-902	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article and to specify eligibility and administrative requirements for the logo sign programs, including provisions involving contractor selection and administration, eligibility criteria for primary and secondary businesses seeking to place a logo sign panel on a particular state highway, and responsible operator pricing and lease procedures.
R17-3-904	To inform the public about the Department's obligation to follow all federal guidelines provided in the Manual on Uniform Traffic Control Devices when placing a sign on any highway that is part of the State Highway System, and the maintenance of which is under the jurisdiction of the Department.
R17-3-905	To inform the public of the rural logo sign spacing requirements and written agreements that pertain to rural logo signs.
R17-3-906	To inform the public and current logo sign leaseholders that any changes made to these rules would not impact a responsible operator's lease prior to the expiration of that operator's existing lease.

3. Are the rules effective in achieving their objectives? **Yes _X_ No ___**

If not, please identify the rules that are not effective and provide an explanation for why the rules are not effective.

Rule	Explanation
R17-3-701	(A). Purpose. While this rule is generally effective in meeting the stated objective, additional definitions are needed to clarify existing language. A definition of what constitutes a complete application should include supporting documentation to better support rule enforcement and licensing time-frame compliance under A.A.C. R17-1-102(B). (B). Outdoor Advertising Permit Application Procedure. (B)(12) provides an initial time frame and a subsequent extension period during which an applicant can build a sign, which requires additional and unnecessary

	administrative effort since the Department needs to monitor two different time frames for the construction of a sign, instead of initially allowing up to 180 days for construction. (C). Administrative Rules; and (D). Standards for directional and other official signs: While these subsections are generally effective in meeting the stated objectives, the rules would be more effective if amendments were made to encompass modern technologies, such as geospatial locating by Geographic Information Systems (GIS), and to ensure ongoing consistency with national standards as required under the Federal and State Agreement and authorizing regulations provided under 23 U.S.C. 131 and 23 CFR 750.

4. Are the rules consistent with other rules and statutes? **Yes _X_ No ___**

If not, please identify the rules that are not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rules.

Rule	Explanation
R17-3-201 R17-3-202 R17-3-203 R17-3-204	A.R.S. § 41-2501(K) specifically exempts the State Transportation Board and the Department from strict adherence to the Arizona Procurement Code in relation to the subject matter contained in these rules. All procurement activities conducted by the Department under these rules are subject to A.R.S. Title 28, Chapter 20, and 2 CFR 200.317.
R17-3-301	This rule is consistent with A.R.S. §§ 28-7141 to 28-7149 and 28-7152 and federal statutes, 42 U.S.C. 4601, et seq., except as described under items 5 and 8 below. The rules incorporated by reference, as amended under this Article for programs and projects undertaken by the Department at the state level are also in compliance with other applicable federal laws and implementing regulations, including, but not limited to, the following: (a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1981 et seq.). (b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). (c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended. (d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). (e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.). (f) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234). (g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). (h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892. (i) Executive Order 11246—Equal Employment Opportunity, as amended. (j) Executive Order 11625—Minority Business Enterprise.

	(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands. (l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws. (m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights. (n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.). (o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing (January 17, 1994).
R17-3-701	(A). Purpose The definitions are generally consistent with federal and state laws, and the Federal and State Agreement. However, to ensure future consistency with all applicable terms already defined by statute, the introductory paragraph in this subsection should be amended to read, "In addition to the definitions prescribed under A.R.S. § 28-7901, the following terms apply to this Article, unless otherwise specified:". (B). Outdoor advertising permit application procedure The rules are generally consistent with federal and state laws, and the Federal and State Agreement. However, subsection (B)(10) is not consistent with A.R.S. § 28-7906, in that a sign that is erected prior to the issuance of a permit is unlawful and the Director shall begin the process of having the sign removed, not just charging a nominal fee. (C). Administrative Rules The rules are generally consistent with federal and state statutes and regulations, except that the highway classification terminology provided (primary or secondary highway), needs to be updated to conform to current highway classifications as designated by the Federal Highway Administration.
R17-3-701.01	This rule is generally consistent with state statutes and other rules made by the Department, except that the reference to A.R.S. § 28-2102(A)(4) or (5) was renumbered to A.R.S. § 28-7912 and amended after promulgation of the rule. An incorporated city or town or a county may control outdoor advertising along interstate, secondary and primary highways by enacting comprehensive zoning ordinances as provided under A.R.S. § 28-7912. 23 U.S.C. 131(d) provides that "[t]he States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary

	use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographical jurisdiction of such authority."
R17-3-703	This rule is consistent with state statutes and other rules made by the Department, except that A.R.S. § 28-7901(11), which previously contained the definition of an "unzoned commercial or industrial area," was renumbered and amended as A.R.S. § 28-7901(14) after promulgation of the rule. The authorizing statutes and this rule are fully consistent with the federal guidelines established for junkyard control programs under 23 U.S.C. 136.
R17-3-901 R17-3-902 R17-3-904 R17-3-905 R17-3-906	These rules are consistent with A.R.S. §§ 28-642 and 28-7311 and other rules made by the Department.

5. Are the rules enforced as written? **Yes _X_ No ___**

If not, please identify the rules that are not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issues.

Rule	Explanation
R17-3-301	The Department enforces all 34 sections of the federal regulations as incorporated by reference under these rules. However, to determine the maximum statutory benefit allowed in Arizona, the Department must use the benefit allowance limits provided under Title 28, Arizona Revised Statutes, Chapter 20, Article 7, which were amended by Laws 2014, Ch. 28, §§ 6 through 8 and Laws 2021, Ch. 335, § 16 to match the increased amounts now permitted at the federal level as described under Item 8 below.
R17-3-502	The Department enforces this rule as written. However, the Department's enforcement efforts are limited if the previous owner of the property with an existing permitted encroachment fails to properly inform the new owner of the requirement to apply for a new encroachment permit under R17-3-502(D). Since the Department is not generally involved in sales or transfers of real property abutting a state highway right-of-way, there is no way for the Department to determine who recently purchased the property, or to verify whether or not the previous property owner appropriately disclosed to the new property owner that a new encroachment permit would be required under R17-3-502(D). *Here is an example of why this notification process is so important:*

	When a landowner requests access to a property from US60 (driveway, could be gravel, could be paved, etc.), the Department may issue an encroachment permit detailing specific requirements that the landowner must abide by when constructing and maintaining such access. If Department engineers conclude that a proposed driveway will likely cause a drainage issue, the encroachment permit issued by the Department will provide detailed instructions that the property owner must follow to appropriately mitigate the drainage issue and successfully maintain that access. The property owner may agree to clear any culvert(s) built under the driveway on a monthly basis, and acknowledge that a certain type of cattle guard gate will be installed, maintained, and inspected at least quarterly if a Department right-of-way fence is cut to allow the driveway. The permit is the contract and agreement between the abutting property owner and the Department. However, if that property is subsequently sold, the new owner may have no idea that the gate and the culvert need to be maintained. The new property owner may not need that access point or even know to whom it belongs. Gone unchecked, mud, rocks, and other debris can build up and create a drainage issue that may trigger flooding along the US60, the fence may break, cows can get onto US60, which could lead to closing down the highway while the Department and the highway patrol work diligently to wrangle and remove the unwary cattle from the roadway. Each encroachment permit issued by the Department references the notification requirement for safety reasons. The Department is actively seeking an electronic solution that may improve the notification process, and if determined by the Department to be a feasible solution, the rule will be amended accordingly.
R17-3-701(B)	The rules are generally enforced as written except for subsection (B)(10), which stipulates that the Department shall charge a fee of $20 in addition to the regular permit fee if a sign is illegally erected prior to the issuance of a permit. In this scenario, the Department would initiate a process by which the sign owner is required to remove the sign at the owner's expense, as signs erected in this manner would be deemed unlawful and found to be in violation of federal and state laws and regulations. The Department does not have statutory authority to charge a fee for signs erected prior to issuance of a permit. However, the Department will afford an unlawful sign owner the opportunity to apply for an appropriate permit on payment of the $20 application fee authorized under A.R.S. § 28-7909. If, after processing the application, the Department determines that the sign cannot be allowed to remain, and the applicant refuses to remove the sign, the Department will begin the process of having the sign removed as provided under A.R.S. § 28-7906.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

If not, please identify the rules not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rules to improve clarity, conciseness, and understandability.

The Department intends to further clarify the following rules by making minor technical corrections that may provide additional regulatory relief for some of the industry and ensure that the rules are more clear, concise, and understandable. Additional amendments may be needed to ensure conformity with the rulemaking format and style requirements of the Secretary of State's Office.

R17-3-202	While the rules are generally clear, concise, and understandable, the Department believes that the regulated community and the Department may benefit by amending the rules concerning financial statements, as follows: (B)(l) Clarify that all amounts stated in the financial statements shall be in US currency, and consider adding other standards for financial statements if necessary in light of changing accounting standards. Consider amending the rule to change, from 15 months to 16 months, the period of time within which prequalification remains valid. (E)(1) Amend to require contractors requesting prequalification to submit individual statements in addition to the combined statements currently required by generally accepted accounting principles. Clarify that financial statements shall cover a fiscal year, and that the Department will not consider a financial statement that does not comply with that requirement without a showing of good cause. Amend to clarify that the Board, in considering working capital (current assets minus current liabilities), will exclude the following items from current assets in calculating adjusted current assets: • 50 percent of Inventory • Receivables from owners, employees, or related parties • Prepaid insurance Clarify that adjusted working capital shall equal adjusted current assets minus current liabilities. (E)(3) Consider adjusting the maximum prequalification limit prescribed in the year 2001 to a more current value using the Federal Highway Administration's National Highway Construction Cost Index.

	(F)(4) Amend to specify that the maximum prequalification amount authorized by the Board for a contractor prequalification is the lesser of 20 times a contractor's adjusted working capital or 10 times a contractor's net worth. Amend to provide for stated prequalification amounts of up to $250 million. A prequalification amount of greater than $250 million will be considered "unlimited." (G)(1) Amend to additionally reference the Department's administrative hearing procedures under 17 A.A.C. 1, Article 5.
R17-3-302	(A) The words "federal agency or state" should be removed from the definition of "Decent, safe, and sanitary dwelling," since the funding agency for any project applicable to these rules would be the Arizona Department of Transportation, as indicated under the definition of "agency" in this Section. (C) Similarly, the word "federal" should be removed from the last sentence of this subsection. All of the rules located under Article 3 (R17-3-301, R17-3-302, R17-3-303, and R17-3-305) will be amended to incorporate by reference the updated federal regulations, as published at 89 FR 36908, May 3, 2024.
R17-3-501	The phrase "unless otherwise defined," is unnecessary and should be removed from the introductory paragraph. The term "State highway" was renumbered under A.R.S. § 28-101. Delete subsection (47) reference.
R17-3-504	(B)(5) Amend to require that an application include a legal description of the location (i.e. GPS coordinates or highway station markers).
R17-3-507	(A) Amend by striking, "under A.R.S. §§ 41-1072 through 41-1077 and A.A.C. R17-1-102," and inserting "within the time-frames established by the Department under A.A.C. R17-1-102." (C) Amend for clarity and conciseness. (C)(3) Insert "and 17 A.A.C. 1, Article 5" at the end of the sentence.
R17-3-701	(A) Amend the introductory paragraph to read, "Definitions. In addition to the definitions prescribed under A.R.S. § 28-7901, the following terms apply to this Article unless otherwise specified:". Define the term "Complete application" and clarify that it includes all required supporting documentation. (A)(1) The term "abandoned sign" is not used within the rule. Additionally, the definition is inconsistent with the federal regulatory definition.

	(A)(8) The phrase "Federal or state law" is unnecessary. (A)(9) The term "illegal sign" is defined but not used within the text of the rule. (A)(10) The definition of "Intended to be read from the main traveled way" contains regulatory criteria inappropriate for a definition Section. (A)(13) The term "lease" is unnecessary. (A)(14) The definition of "maintain" is vague. Additionally, included within the definition are the terms "of good repair," "safe condition," and "copy," which are not defined in the rule. (A)(20) The definition of "on-premise sign" is confusing and contains regulatory criteria inappropriate for a definition Section. Additionally, the independent clause "(such signs are not controlled by state statutes)," which was once necessary for clarification purposes, is no longer a true statement and should be deleted. Blinking and flashing are now controlled by statute. (A)(26) The phrase "scenic overlook or rest area" is not used in the text of the rule language, but different variations of the phrase are used. (A)(29) The definition of "Within the view of and directed at the main-traveled way" contains regulatory criteria inappropriate for a definition Section. Subsection (B) would be more clear, concise, and understandable if divided into smaller, more manageable, subsections consistent with the subject areas. (B)(1) This subsection is unnecessary. (B)(3) The current rule incorrectly specifies that new permit applications should be mailed to the maintenance permit engineer. The permit application process is centralized through the Department's Statewide Permits Services unit, located in Phoenix, thereby making the availability of assistance at District offices incorrect. (B)(5) This subsection specifies that the application must indicate the legal description of the sign site, but does not indicate what constitutes a legal description. (B)(9) This subsection is more appropriately placed within Department policies and procedures. (B)(10) Clarify the last sentence which appears to require an additional $20 noncompliance fee. If a sign was illegally erected the Department would immediately initiate the process prescribed under A.R.S. § 28-7906, by which the sign owner would be required to remove the sign at the owner's expense. However, if an application is denied for noncompliance, the applicant may

	submit a new application on payment of a new $20.00 application fee if timely compliance is subsequently achieved. Subsection (C) would be more clear, concise, and understandable if renamed to read, "Conformance Requirements; Hearings" and divided into smaller, more manageable, subsections consistent with the subject areas. (C)(1) This subsection is unnecessary. (C)(2) This subsection is unclear because it does not specify what a primary or secondary highway is, nor does it provide guidance on how to obtain an encroachment permit. The rule should be amended to reference the definitions prescribed under A.R.S. § 28-7901, and appropriate references should be added to provide guidance on how to obtain an encroachment permit. (C)(3) This subsection does not prescribe the consequences of a sign being in violation and should be amended to reference A.R.S. § 28-7906. (C)(3)(c) The restriction on a nonconforming sign being rebuilt does not qualify the phrases "different configuration" or "material composition." (C)(4) This subsection provides no reference to any definition of "commercial or industrial activity." (C)(11) This subsection should be amended to cite the administrative hearing rules provided under 17 A.A.C. 1, Article 5. Subsection (D) would be more clear, concise, and understandable if amended as follows: (D)(1) Subsection is unnecessary. (D)(3) Amend minor formatting and typographical errors. (D)(3)(d) The highway classification terms need to conform to current highway classifications. (D)(3)(f) Update to reflect the Department's current process for determining eligibility for directional signs in support of privately owned activities and attractions. (D)(3)(f)(vii) The rule does not properly reference where a person may locate the "Rules and Regulations for Outdoor Advertising along Arizona Highways." (D)(3)(g) This subsection does not specify how it is determined that an area is "primarily rural in nature," or provide who is to make such a determination. (D)(3)(h) This rule does not specify if the official signs and notices require a permit.
R17-3-701.01	(A) Strike "A.R.S. § 28-2102(A)(4) or (5)," and insert "A.R.S. § 28-7902(A)(4) or (A)(5)."

	(B)	Strike "A.R.S. § 28-2106(4)," and insert "A.R.S. § 28-7909." Define "comprehensive zoning plan" to include how the Department determines that the zoning is "created primarily to permit outdoor advertising structures." Define "limited commercial or industrial activities," to include how the Department determines that the use is "incident to other primary land uses."
R17-3-703	(B) (B)(5)	Amend to add, "In addition to the definitions provided under A.R.S. § 28-7941, the following terms apply to this Section." Strike "A.R.S. § 28-7901(11)," and insert "A.R.S. § 28-7901, "Unzoned commercial or industrial area."
R17-3-901	(A)	The definitions of "Major metro area," "Rural area," and "Urban area" appear to be in conflict with the term "Urbanized area" as defined in R17-3-902, Logo Sign Programs, as meaning the same as prescribed in A.R.S. § 28-7311(E)(2). The U.S. Census Bureau no longer distinguishes between different types of urban areas based on size of population above or below 50,000 people and they no longer label areas as either urbanized areas or urban clusters. All areas, regardless of population size, are simply called "urban areas." The Department should re-examine these definitions to determine if they should be updated to reflect the existing population standards when determining which colleges and universities might be eligible to apply for signing under these rules.
R17-3-902	(A)	The definition of "Domestic microbrewery" needs to be amended to reflect statutory updates provided under Laws 2015, Ch. 131, § 1, which raised the upper threshold to still be considered a microbrewery to 6.2 million gallons of beer in a calendar year. The definition of the term "Highway" should be amended to reflect that the term is defined under A.R.S. § 28-101, "Street" or "highway". Remove the subsection numbers from all references of A.R.S. § 28-7311 to avoid future issues when statutes are renumbered.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No _X_**

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

The Department has not received any written criticisms of R17-3-701 in the last five years, however, two of the comments the Department received during its last rulemaking effort at 18 A.A.R. 2347, September 28,

2012, will still be considered if the Department is eventually able to move forward with any anticipated rule amendments:

Scenic Arizona requested that the Department amend R17-3-701(A)(16)(a) to add the term "cumulative," suggesting that this change will prevent someone from replacing a nonconforming sign by scheduling maintenance in at least two phases to stay within the required 50%. The Department believes that this comment merits further analysis and will consider the suggested language in a future, more comprehensive, rulemaking.

Scenic Arizona requested that the Department also strike the language "beyond normal maintenance" in R17-3-701(C)(3)(c), suggesting that normal maintenance does not include changes in configuration or materials used in the sign. The Department believes that this comment also merits further analysis and will consider the suggested change in a future, more comprehensive, rulemaking.

Scenic Arizona is a Tucson branch of Scenic America, which describes itself as the only national 501(c)(3) nonprofit organization dedicated to preserving and enhancing the visual character of the country's roadways, countryside, and communities.

8. Economic, small business, and consumer impact comparison:

The economic impact of each of these rules has been the same as estimated by the Department in the economic impact statement prepared on the last amendment of each rule.

Article 2. Management of Contractor Bidding	Currently, there are 125 prequalified contractors interested in doing business with the Department. The economic impact of the following rules has been the same as estimated in the economic impact statement prepared on the last amendment of the rules.
Article 3. Relocation Assistance	Although the economic impact of the rules in this Article remains the same as estimated by the Department in the economic impact statement prepared on the last amendment of the rules, Laws 2014, Ch. 28, §§ 6 through 8 and Laws 2021, Ch. 335, § 16, incorporated several of the amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), which increased the allowable maximum statutory benefit effective October 1, 2014, as follows: • Replacement housing payments for displaced homeowners under A.R.S. § 28-7144(A) increased from $22,500 to $31,000; • Replacement housing payments for displaced tenants under A.R.S. § 28-7146(B) increased from $5,250 to $7,200;

	• Reestablishment payments for displaced businesses under A.R.S. § 28-7143(A)(4) increased from $10,000 to $50,000 (effective September 29, 2021); • Fixed payments for nonresidential moves under A.R.S. § 28-7143(C) increased from $20,000 to $40,000; and • Length of occupancy requirement for homeowners under A.R.S. § 28-7144(A) was reduced from 180 days to 90 days in occupancy before the initiation of negotiations. The Federal Highway Administration will reimburse these funds to the state with Title 23 grant funding as provided under 23 CFR 710.203. Additionally, where ADOT previously reported having 14 state employees and 2 consultants directly involved with relocation and property management activities, the Department now has 4 state employees, 8 consultants, and 4 consulting firms involved with these activities.
Article 5. Encroachment Permits	Costs to persons regulated by this rule are minimal and include the costs associated with completing an application or request form provided by the Department and providing the Department with all required documentation in support of the request. The Department believes that this rule imposes no significant burden or costs to persons regulated by the rule. In **FY 2019**, the Department's Statewide Permits Services unit: • Received 2504 encroachment permit applications; • Issued 2055 encroachment permits (permits are to be issued within 150 days of receipt; unless the clock stops due to required information on the applicant's part, meetings, etc.; some projects are extensive in scope and, in some cases, may take years to finalize); and • Denied 5 encroachment permit applications. In **FY 2024**, the Department's Statewide Permits Services unit: • Received 2524 encroachment permit applications; • Issued 2076 encroachment permits; and • Denied 0 encroachment permit applications.
Article 7. Highway Beautification	In **FY 2019**, the Department's Statewide Permits Services unit processed: ● Outdoor Advertising permit applications received: 32 ● Outdoor Advertising permits issued: 28 (permits are to be issued within 60 days of receipt; unless the clock stops due to required information on the applicant's part)

<table>
<tr><td></td><td>

Outdoor Advertising applications denied: 3
Outdoor Advertising Permits canceled: 47
Current signs in inventory renewed and/or monitored annually: 2071 (permitted conforming requiring renewal of permit: 1678; permitted nonconforming requiring renewal of permit: 140; grandfathered nonconforming monitored to comply with regulations: 253)

In FY 2019, ADOT continued to employ a contractor (under contract for $365,465) to perform a semiannual inventory of current signs, and inspect new signs for new permit requests received by the Outdoor Advertising program. ADOT received $20 per new application and $5 per annual renewal (28 x $20 = $560 and 1818 x $5 = $9,090 for a total reimbursement of $9,650 for the state highway fund).

In FY 2024, the Department’s Statewide Permits Services unit has processed:

Outdoor Advertising permit applications received: 18
Outdoor Advertising permits issued: 10 (permits are to be issued within 60 days of receipt; unless the clock stops due to required information on the applicant’s part)
Outdoor Advertising applications denied: 8
Outdoor Advertising Permits canceled: 8
Current signs in inventory renewed and/or monitored annually: 2119 (permitted conforming requiring renewal of permit: 1872; permitted nonconforming requiring renewal of permit: 127; grandfathered nonconforming monitored to comply with regulations: 247)

In FY 2024, the Department’s Outdoor Advertising program performs the semiannual inventory of current signs and inspects new signs for new permit requests received. ADOT still receives $20 per new application and $5 per annual renewal (18 x $20 = $360 and 1872 x $5 = $9,360 for a total reimbursement of $9,720 for the state highway fund). This program is an unfunded federal mandate. If Arizona does not effectively control outdoor advertising, the FHWA may withhold 10% of the state’s transportation budget for the year. The probable benefits of the rules outweigh the probable costs of the rules.
</td></tr>
<tr><td>Article 9. Highway Traffic Control Devices</td><td>
Since FY 2015, the Department’s cash flow to the State Highway Fund from Urban/Rural Logo Sign Programs has increased exponentially as follows:
<table>
<tr><th></th><th>FY15 Actual</th><th>FY19 Actual</th><th>FY24 Actual</th></tr>
<tr><td>Total Infrastructure Investment</td><td>2,308,868</td><td>1,472,854</td><td>1,062,682</td></tr>
</table>
</td></tr>
</table>

		(20 traffic interchanges, 92 leases, 4.6 leases per traffic interchange)	(352 traffic interchanges, 1863 leases, 5.29 leases per traffic interchange)	(385 traffic interchanges, 2154 leases, 5.59 leases per traffic interchange)
	Cash Flow Before Operating Expenses	(971,348)	3,876,950	6,134,096
	Operating Expenses	830,681	806,829	707,698
	Cash Flow - Urban	(1,802,028)	950,655	4,026,766
	Cash Flow - Rural	(1,558,587)	2,119,465	1,216,506
	Total Cash Flow - Highway Fund	(243,441)	3,070,121	5,243,272

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes ___ No _X_ *Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Department did not complete the course of action indicated in its previous five-year review report for the following rules after determining that the recommendations did not merit an exemption from the rulemaking moratorium. The rules generally met objectives and were effective, consistent with statute, and enforceable as written. All the indicated amendments, although justifiable at the time of the report, were noncritical and did not have a significant impact on the enforceability of the rules. The indicated amendments (to provide additional clarification, update statutory references, and ensure conformity with current rulemaking format and style requirements) were intended only to improve rule clarity, conciseness, and understandability, but did not rise to the level of urgency necessary for the Department to seek special permission from the Governor's Office to proceed with rulemaking while under a strict rulemaking moratorium. However, the Department remains committed to making the amendments, as outlined in this report, and will request permission from the Governor's Office to complete the anticipated amendments on Council approval of this report.

Article 2. Management of Contractor Bidding: The Department's previous five-year review of the following rule indicated that the Department would seek an exception from the Governor's Office to proceed with rulemaking, and if approved, would amend the rule by June 30, 2020.

R17-3-202. Contractor Prequalification

Article 3. Relocation Assistance: The anticipated course of action indicated by the Department in its previous five-year review of these rules (to amend the rules by June 30, 2020) was entirely contingent on when the U.S. Department of Transportation could successfully amend the federal regulations under 49 CFR 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The federal regulations incorporated by reference under the following rules were finally amended at 89 FR 36908, May 3, 2024, effective June 3, 2024:

R17-3-301. Relocation Assistance; Adoption of Federal Regulations
R17-3-302. Relocation Assistance; 49 CFR 24, Subpart A - General
R17-3-303. Relocation Assistance; 49 CFR 24, Subpart C - General Relocation Requirements
R17-3-305. Relocation Assistance; 49 CFR 24, Subpart E - Replacement Housing Payments

Although the Department's implementing statutes were updated by Laws 2014, Ch. 28, §§ 6 through 8 and Laws 2021, Ch. 335, § 16, to reflect the increased maximum statutory benefit amounts prescribed in Section 1521 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), the Department is currently in the process of analyzing all the new amendments made to 49 CFR 24 at 89 FR 36908, May 3, 2024 and will request permission from the Governor's Office to proceed with the necessary rulemaking on Council approval of this report.

Article 5. Highway Encroachments and Permits: The Department's previous five-year review of the following rules indicated that the Department would amend the rules by June 30, 2020, to improve clarity, conciseness, and understandability as indicated under item 6 above:

R17-3-501. Definitions
R17-3-502. Applicability
R17-3-503. Who Can Apply for an Encroachment Permit
R17-3-504. General Application Procedures
R17-3-505. Supporting Documentation
R17-3-506. Encroachment Permit Requirements
R17-3-507. Review Procedures
R17-3-508. Unauthorized Encroachments; Enforcement Actions
R17-3-509. Hearings

Article 7. Highway Beautification: The Department's previously stated course of action indicated that amendments would be completed on these three rules by June 30, 2020, to improve clarity, conciseness, and understandability of the rules:

R17-3-701. Outdoor Advertising Control
R17-3-701.01. Outdoor Advertising Control: Restrictions on the Erection of Billboards and Signs and Restrictions on the Issuance of Permits
R17-3-703. Arizona Junkyard Control

The Department has noted the suggestions received from Scenic Arizona as indicated under item 7 above.

Article 9. Highway Traffic Control Devices: The Department indicated no course of action in the previous five-year review report for the following rules:

R17-3-901.	Signing for Colleges and Universities
R17-3-902.	Logo Sign Programs
R17-3-904.	MUTCD Requirements for Logo Signs
R17-3-905.	Rural Logo Sign Requirements
R17-3-906.	Existing Leases

11. <u>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 objectives:</u>

In rulemaking, the Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or industry. Therefore, the Department has determined that the benefits of all the rules in this Chapter outweigh the costs.

Article 2. Management of Contractor Bidding

R17-3-201 R17-3-202 R17-3-203 R17-3-204	Although a contractor must pay a public accountant or CPA to prepare the financial statement, the rules do not require a contractor to submit a more costly "examined" financial statement. Instead, a contractor may submit a compiled financial statement that does not give an accountant's professional opinion as to the contractor's financial stability. The rules in this Article are designed to minimally impact small business contractors and the Department believes that the probable benefits of the rules outweigh the probable costs of the rules. The Department believes that these rules already provide the least burdensome process, other than eliminating the contractor prequalification process altogether. Many firms have expressed a deep appreciation for the Department's prequalification process, and each time the Department begins to openly consider eliminating the process, many of the contractors protest the idea. The Department's prequalification process allows contractors to feel confident that if they submit a bid on a project, they will not be underbid by a disreputable firm that does not have proven work experience or the financial stability needed to carry through on any awarded contract. Additionally, some contractors are proud of their ADOT prequalification status and have successfully used that status as a good reference to help them qualify for large projects offered by other clients. The not readily quantifiable benefits of avoiding contractor default while also promoting confidence in the Department's competitive bidding process appear to be greater than any costs associated with these rules. Contractor costs are low since any

	sort of business information or documentation required of a contractor for compliance with the rules is much of the same business information or documentation already maintained in other business contexts, such as financial statements used to maintain insurance policies or as support for fiscal tax filings, etc. The business information and documentation accepted by the Department is generally readily available.

Article 3. Relocation Assistance

R17-3-301 R17-3-302 R17-3-303 R17-3-304	The relocation assistance rules in this Article mirror the federal standards and guidelines provided under 49 CFR 24, but are prescribed by the Department for use when the program or project is not currently, or intended to be, part of the National Highway System and would not otherwise qualify for federal funding. However, as provided in 23 U.S.C. 109, the U.S. Department of Transportation holds the Department in strict compliance with all existing federal standards and guidelines when administering any program or project funded, in whole or in part, by federal-aid. Adherence to well-established federal standards and guidelines for any proposed highway program or project that may eventually involve a portion of the Federal-aid Highway System provides certain assurances that all possible adverse economic, social, or environmental impacts of the proposed highway program or project will be fully considered in the development stage, and that the final decisions on the program or project will be made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects, including: (1) Air, noise, and water pollution; (2) Destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services; (3) Adverse employment effects, and tax and property value losses; (4) Injurious displacement of people, businesses and farms; and (5) Disruption of desirable community and regional growth. Adopting the federal uniform relocation assistance guidelines for use on state-level transportation programs and projects has encouraged procedural uniformity for the Department and individuals, families, businesses, and farm operations displaced as a result of programs and projects undertaken by the Department. Although the rules in this Article represent only a small portion of the Department's exhaustive transportation planning processes, the uniform procedures allow the Department to: ensure the fair and equitable treatment of displaced persons; minimize the hardship of displacement on such persons; and ensure that those persons do not suffer

	disproportionate injuries as a result of any program or project designed for the benefit of the public as a whole, as required under A.R.S. § 28-7142.

Article 5. Highway Encroachments and Permits

R17-3-501 R17-3-502 R17-3-503 R17-3-504	Costs to persons regulated by the rules in this Article are minimal and include the costs associated with completing an encroachment permit application and providing the Department with all required documentation in support of the permit application. The Department believes that these rules impose no significant burden or costs to persons regulated by the rules other than the minimal costs involved with any necessary correspondence between the Department and the permit applicant. No fees are authorized by statute, or collected by the Department, for reviewing and acting on an encroachment permit application. ADOT employees, at no charge to the customer, perform the required engineering analyses, inspections, review, etc. The process used by Department engineers and permit technicians for deciding whether to approve or deny an encroachment permit application is complex and varies depending on the type of encroachment permit requested. Some encroachment permit applications involve portions of highways that may conflict with scheduled ADOT construction projects, or portions of highways identified as part of a joint project agreement between the Department and a county or political subdivision, which may delay issuance of the requested permit for several months. Due to obvious concerns for public safety, these permits cannot be issued until the entire analysis process is complete. ADOT does not recover costs or charge any other fees in connection with this process. The probable benefits of these rules outweigh the probable costs of the rules.

Article 7. Highway Beautification

R17-3-701 R17-3-702 R17-3-703 R17-3-704	Costs to persons regulated by the rules in this Article are minimal and include the costs associated with completing an Outdoor Advertising Permit application and providing the Department with all required documentation in support of the permit application. The Department believes that these rules impose no significant burden or costs to persons regulated by the rules other than the minimal costs involved with any necessary correspondence between the Department and the permit applicant. 23 U.S.C. 131 requires states to provide effective control of the erection and maintenance of outdoor advertising signs, displays, and devices along the interstate system and the primary system within 660 feet of the nearest edge of the right-of-way if visible from the main-traveled way of the system and erected with the purpose of

	the message being read from that main-traveled way. The Federal Highway Administration may withhold 10% of the federal-aid highway funds apportioned to the state under 23 U.S.C. 104 if it determines that the Department has not provided effective control. The probable benefits of these rules outweigh the probable costs of the rules.

Article 9. Highway Traffic Control Devices

R17-3-901 R17-3-902 R17-3-903 R17-3-904	All costs incurred by the Department and any sponsor participating in the Department's logo sign program are paid under agreements negotiated between the Department and the sponsors who seek to join the Department in providing information about motor vehicle- and motorist-related goods and services directly to the motoring public throughout the state. Federal regulations limit participation in the logo sign program to certain types of travel-related businesses (e.g. gas, food, lodging, etc.), however, participation in the program is completely voluntary and subject to the availability of logo sign space. The Department has only minor flexibility regarding the design and placement of these types of highway signs due to strict federal standards and regulations, state rules, and other highway traffic engineering considerations. Current program design, logo sign size, and locations are very dependent on traffic engineering and must comply with the current edition of the Manual on Uniform Traffic Control Devices, which specifically outlines the types of businesses that can actually qualify for participation in such programs, limits the number of logos and signs that can be erected, and controls where these types of signs are located. The Department has determined that these rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes ___ No _X_**

Please provide a citation for the federal laws. And if the rules are more stringent, is there statutory authority to exceed the requirements of federal laws?

All Articles	All of the rules contained in this Chapter are either in conformance with corresponding federal laws, or no corresponding federal law exists. The Department is obligated to follow all federal laws, rules, and guidelines relating to highways built or maintained with federal-aid funding. Where highways or other transportation facilities are built and maintained solely with state and local funding, all state laws, rules, and guidelines apply. The following references to federal laws, rules, and guidelines apply to the

	subject matter of these rules; however, the rules are not more stringent than any of the federal laws, rules, and guidelines: Title 23, United States Code (U.S.C.), Section 109(d), Standards for Federal-Aid Highways; 23 U.S.C. 111(b), Rest Areas; 23 U.S.C. 131, Control of Outdoor Advertising; 23 U.S.C. 156, Proceeds from the Sale or Lease of Real Property; 23 U.S.C. 402, Highway Safety Programs; 23 Code of Federal Regulations (CFR), Section 1.23(b), Rights-of-way; Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), published by the Federal Highway Administration (FHWA) as prescribed under 23 CFR 655, Subpart F, Traffic Control Devices on Federal-Aid and Other Streets and Highways; 23 CFR 655.603, Standards for Traffic Control Devices on Federal-Aid and Other Streets and Highways; 23 CFR Part 750, Highway Beautification (for controlled routes); 49 CFR 1.85, Delegations to Federal Highway Administrator; and FHWA Order 5160.1A, Policy on Sponsorship Acknowledgment and Agreements within the Highway Right-of-Way (April 7, 2014); and IRC Sec. 170(c)(1) Charitable, etc., contributions and gifts.

Article 2. Management of Contractor Bidding

R17-3-201 R17-3-202 R17-3-203 R17-3-204	The rules in this Article are applicable to "state-funded" transportation facility construction or reconstruction projects and have no corresponding federal law. However, the rules are not more stringent than the federal-aid procurement regulations maintained by the Federal Highway Administration for "federally-funded" transportation facility construction or reconstruction projects. While the federal government does not require a prequalification process in order to receive federal aid, the Federal Highway Administration recognizes that, "A State Transportation Agency's (STA's) procedures for soliciting and awarding construction contracts are an important part of the competitive bidding process. To ensure a competitive contracting environment, STAs should develop effective prequalification programs and other procedures to ensure fairness in the pre-bid solicitation process and post award review of construction bids." *Guidelines on preparing engineer's estimate, bid reviews and evaluation", dated January 20, 2004.* [Source: http://www.fhwa.dot.gov/programadmin/contracts/ta508046.pdf]

	The FHWA federal-aid procurement regulations are applicable to traditional construction, engineering and design services, non-engineering/non-architectural, and innovative contracts on certain construction projects involving "federally-funded" transportation facilities, and are not intended to address potential procurement issues that are particular to a specific state or local agency's procurement legislation, regulations, or practices. Therefore, state and local agency regulations for "state-funded" transportation facility construction or reconstruction projects may be more restrictive. State and local agencies must consider their respective statutory requirements and pertinent case law in determining the legal feasibility of utilizing a particular contracting technique, feature, or provision. The following state statutes were used in determining the consistency: A.R.S. §§ 28-6923, 28-7363(E), and 41-2501(J) and (N).

Article 3. Relocation Assistance

R17-3-301 R17-3-302 R17-3-303 R17-3-304	The federal relocation assistance laws, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the federal regulations in 49 CFR Part 24, Subparts A, C, and E, and Appendix A (October 1, 2010), are applicable to these rules as incorporated by reference. The Department has determined that these rules are no more stringent than any corresponding federal law. All federal regulations incorporated by reference under this Article have been amended for applicability to "state-funded" transportation programs and projects, which have no corresponding federal law. However, the rules are not more stringent than the regulations maintained by the Federal Highway Administration for relocation assistance activities involved with programs and projects involving "federally-funded" transportation facility construction or reconstruction. FHWA regulations are applicable to relocation assistance provided for construction projects involving "federally-funded" transportation facilities, and are not intended to address transportation program and project issues that are particular to a specific state or local agency's authorizing legislation, regulations, or practices. Therefore, state and local agency regulations for "state-funded" transportation facility construction or reconstruction programs or projects may be more restrictive. State and local agencies must consider their respective statutory requirements and pertinent case law in determining the legal feasibility of utilizing a particular process for providing appropriate relocation assistance. The following state statutes were used in determining consistency: A.R.S. §§ 28-7141 to 28-7149 and 28-7152 and federal statutes under 42 U.S.C. 4601, et seq.

Article 5. Highway Encroachments and Permits

R17-3-501 R17-3-502 R17-3-503 R17-3-504	The rules in this Article have no corresponding federal law that is applicable to an encroachment activity proposed or conducted on a state highway or route under the jurisdiction of the Department. However, an encroachment activity involving the right-of-way on any federal highway or route would be subject to the requirements provided under 23 USC 111.

Article 7. Highway Beautification

R17-3-701 R17-3-702 R17-3-703 R17-3-704	The Department is obligated by statute, and by agreement with the Federal Highway Administration, to adhere to all acceptable standards for effective control of outdoor advertising signs, displays, and devices. The agreement does not prohibit the state, a municipality, or county from adopting standards that are more restrictive in controlling outdoor advertising than the provisions of the agreement. Additionally, the federal regulations that implement outdoor advertising control provide the necessary authority for states to exceed the requirements of the federal regulations (see 23 U.S.C. 131(k) and 23 CFR 750.155). Based on public comments received from outdoor advertising owners during the Department's last rulemaking, the definition of normal maintenance for nonconforming signs was adjusted to allow repairs to a sign when damaged if less than 60% of the uprights require replacement for wood uprights or less than 30% of the length of each upright support above ground for metal uprights require replacement. The FHWA Destroyed Sign Guidance Memorandum dated September 9, 2009, allows for more restrictive repair and replacement percentages, 40% and 20%, respectively. However, the Department believes that even with the 60% and 30% figures, fewer signs will be allowed to be repaired than under the previous rules. The rules in this Article are not more stringent than federal law.
R17-3-701.01	This rule is generally consistent with state statutes and other rules made by the Department, except that the statute was renumbered and amended after promulgation of the rule. An incorporated city or town or a county may control outdoor advertising along interstate, secondary and primary highways by enacting comprehensive zoning ordinances as provided under A.R.S. § 28-7912. 23 U.S.C. 131(d) provides that "[t]he States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned

	commercial and industrial areas within the geographical jurisdiction of such authority."
R17-3-703	The Department is obligated by statute, and by 23 U.S.C. 136, to maintain effective control of junkyards located within 1000 feet of the right-of-way of the Interstate or primary systems if visible from the main-traveled way. Additionally, the federal regulations that implement outdoor junkyard control provide the necessary authority for states to exceed the requirements of the federal regulations (see 23 U.S.C. 136(l)). However, this rule is not more stringent than federal law.

Article 9. Highway Traffic Control Devices

R17-3-901 R17-3-902 R17-3-903 R17-3-904	The rules in this Article are not more stringent than any corresponding federal law. The Department is required under A.R.S. § 28-641 to use a uniform system that correlates with and as far as possible conforms to the most recent edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways. The MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The MUTCD is published by the Federal Highway Administration (FHWA) in accordance with the authority provided under 23 Code of Federal Regulations (CFR), Part 655, Subpart F.

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 detail the eligibility, application, and use requirements for a variety of permits and other authorizations the Department may provide by statute for issuance to any person or entity seeking to obtain permission to conduct certain activities that may require use of, intrusion upon, or construction of an improvement within a state highway right-of-way. Those statutes also provide specific authority for issuance, conditions, restrictions, approvals, and fees for each of the permits issued by the Department under the following rules:

Outdoor Advertising Permits are issued under R17-3-701(B);
Junkyard Screening Permits are issued under R17-3-703;
Contractor Prequalification Authorization is issued under R17-3-202;
Logo Sign Leasing Authorizations for Colleges and Universities are issued under R17-3-901(B); and
Logo Sign Leasing Authorizations for Urban and Rural Logo Signs are issued under R17-3-902.

The Department has fully analyzed these rules for compliance with the general permit issuance requirement provided under A.R.S. § 41-1037 and determined that all permits and authorizations issued under these

rules are "general permits" in that each permittee issued a particular type of permit is subject to the same activities, practices, requirements, and restrictions applicable to that permit type. Each regulatory permit, license, or agency authorization provided by the Department under these rules is specifically authorized by statute and falls within the criteria provided under A.R.S. § 41-1037.

However, under certain circumstances the rules may require additional application for an encroachment permit under A.R.S. § 41-1037 and 17 A.A.C. 3, Article 5, setting forth specific instances in which encroachment permits may be granted and allowing the Department to approve or disapprove an application outside the criteria of these rules. Since some requirements for obtaining an encroachment permit are generally applicable to all encroachment activities while others are specific to the encroaching activity under consideration, the issuance of a general permit as required under A.R.S. § 41-1037, may not always be technically feasible for Encroachment Permits issued under R17-3-502.

For example, the safe movement of oversize and overweight specialized vehicles, loads, or utility equipment being transported throughout the state requires detailed coordination and implementation of complex operations involving many variables. The Department may need to collect more specific information from certain permit holders operating under these rules to make informed decisions on how best to facilitate safe movement and ensure that all appropriate precautions are in place for the preservation of public safety and transportation infrastructure. Certain instances, which generally involve applications submitted for moving oversize and overweight super loads on a highway, or when exigent circumstances exist that may require special consideration by the Department or further coordination with the Arizona Department of Public Safety, may fall outside the criteria for general permit issuance and would be an exception to the general permit issuance requirement provided under A.R.S. § 41-1037.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Article 2. Management of Contractor Bidding: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completing all of the necessary amendments to this Article, as indicated in this report, by September 30, 2025.

Article 3. Relocation Assistance: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completing all of the necessary amendments to this Article, as indicated in this report, by September 30, 2025.

Article 5. Highway Encroachments and Permits: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completing all of the necessary amendments to this Article, as indicated in this report, by September 30, 2025.

Article 7. Highway Beautification: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completing all of the necessary amendments to this Article, as indicated in this report, by September 30, 2025.

Article 9. Highway Traffic Control Devices: On receiving Council approval and permission from the Governor's Office to proceed with rulemaking, the Department anticipates completing all of the necessary amendments to this Article, as indicated in this report, by September 30, 2025.

Arizona Administrative CODE
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Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

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

Questions about these rules? Contact:

Department: Department of Transportation
Rules and Policy Development
Address: 206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Website: https://azdot.gov/about/government-relations
Name: Candace Olson, Senior Rules Analyst
Telephone: (480) 267-6610
Email: COlson2@azdot.gov

The release of this Chapter in Supp. 22-3 replaces Supp. 20-3, 1-24 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. 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 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, 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.

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 2 Phoenix, AZ 85007

Administrative Rules Division
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TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

Authority: A.R.S. §§ A.R.S. §§ 28-366, 28-7384, and 28-7385

Supp. 22-3

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Historical Note

Former Rule, ASHC Resolution. Former Section R17-3-10 renumbered without change as Section R17-3-102 (Supp. 88-4). Repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 2. MANAGEMENT OF CONTRACTOR BIDDING

R17-3-201. General

A. Definitions.

1. "Application" means a request for contractor prequalification, consisting of an application booklet available from the Department's office of Contracts and Specifications, and a financial statement prepared according to the requirements of this subsection and R17-3-202.
2. "Board" means the Contractor Prequalification Board.
3. "Compiled financial statement" means a financial statement prepared for form, appropriateness, and arithmetic accuracy. It does not express an opinion or provide any assurance regarding the financial statement.
4. "Contractor" means the individual, partnership, firm, corporation, joint venture, or any combination acceptable to the Department, that seeks to contract with the Department for constructing or reconstructing state transportation facilities, unless the context requires otherwise.
5. "Contractor prequalification" means the Department's process of review and evaluation of a contractor's work history and current financial condition before a contractor is allowed to submit a proposal for constructing or reconstructing state transportation facilities.
6. "Department" means the Arizona Department of Transportation.
7. "Examined financial statement" means a financial statement that includes the amounts and disclosures in the firm's financial statement, an assessment of the accounting principles used and the significant estimates made by management, and an evaluation of the overall financial statement presentation.
8. "Financial statement" means a financial report prepared according to generally accepted accounting principles by an independent certified public accountant or an independent public accountant. The financial statement includes a cover letter on the accountant's letterhead, a balance sheet, a statement of cash flows, an income statement, and all notes and appropriate supporting schedules.
9. "Joint venture" means the combination of two or more contractors for the purpose of submitting a proposal to the Department and performing a contract for constructing or reconstructing state transportation facilities.
10. "Prequalification amount" means the dollar limitation of each contract, based on the Department's estimate of contract value, for which a contractor may submit a proposal to the Department for constructing or reconstructing state transportation facilities.
11. "Reviewed financial statement" means a financial statement that includes an inquiry of company personnel, and a review of the analytical procedures applied to the financial data. It does not express an opinion regarding the financial statement taken as a whole.
12. "State Engineer" has the meaning in A.R.S. § 28-6901(3).

B. Contractor Prequalification Board.

1. The State Engineer shall appoint the Board to consider and decide on applications for contractor prequalification.
2. The Board will be comprised of three Department employees, one of whom shall be a professional engineer, registered by the Arizona Board of Technical Registration, and one a certified or licensed public accountant.
3. The Board's authority to determine prequalification does not limit the Department's ability to establish additional criteria for contracts.

Historical Note

Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

R17-3-202. Contractor Prequalification

A. Criteria. An applicant for contractor prequalification shall include on the application and the Board shall consider the following information in determining the prequalification amount for a contractor:

1. Key personnel and their work experience,
2. Organizational structure,
3. History of past or current projects and contracts,
4. Company affiliations,
5. Equipment owned or controlled,
6. Any applicable licenses,
7. Type of work requested,
8. Individuals authorized to act on behalf of the contractor,
9. Any prequalification or bidding disputes with a government agency, and
10. Financial condition.

B. Prequalification Expiration and Extension.

1. Prequalification expires 15 months after the end of a contractor's fiscal year, as reflected on the financial statement. Due to the time necessary to prepare an examined financial statement, the Board may grant up to a 60 day extension on the expiration of prequalification, if:
   a. The contractor submits a letter from its accountant stating the reasons for delay in preparing the examined financial statement,
   b. The letter from the accountant states the anticipated completion date of the examined financial statement, and
   c. The contractor submits an interim compiled or reviewed financial statement that was prepared within the previous six months.
2. The Board will notify each contractor in writing of its decision on the contractor's prequalification amount.

C. Joint Ventures.

1. Each contractor in a proposed joint venture shall be prequalified. The joint venture shall submit a joint venture statement of intent at least five calendar days before the applicable bid opening date.
2. If one or more of the parties to the joint venture are corporations, a copy of a resolution from the Board of Directors authorizing the corporation to enter into the joint venture and execute all contract documents shall be submitted with the statement of intent.
3. Contractors operating as a joint venture on a continuing basis may file for prequalification as a joint venture.
4. The Board may allow a contractor operating as a joint venture to prequalify for a pro rata share of the entire contract amount. The percentage share of work shall not

exceed each individual contractor's prequalification amount.

D. Classification of Contractors. The Board shall categorize contractors into the following classifications:
1. Inexperienced firms: Firms that have no experience as contractors in transportation facilities construction work;
2. New firms: Recently organized firms that have officers with experience with other contractors in positions of responsibility for transportation facilities construction;
3. Unknown firms: Firms that have experience as contractors but have not completed a transportation facilities construction contract as a contractor for the Department within the past five years or at any time;
4. Known firms: Firms that have successfully completed at least one transportation facilities construction contract within the past five years as a contractor for the Department.

E. Classification of Financial Statements.
1. All financial statements shall be examined, reviewed, or compiled according to generally accepted accounting principles, by either an independent certified public accountant or an independent public accountant, registered and licensed under the laws of any state. A contractor shall not submit a financial statement prepared by either a certified or public accountant who is directly or indirectly interested in or affiliated with the business of the contractor.
2. A contractor that desires a prequalification amount in excess of $1.5 million shall submit an examined financial statement.
3. A contractor that submits a reviewed financial statement will be limited to a maximum prequalification amount of $1.5 million.
4. A contractor that submits a compiled financial statement will be limited to a maximum prequalification amount of $300,000.

F. Prequalification Limits. In determining the prequalification amount for each contractor, the amount set by the Board may be less than the maximum amount set out in this subsection due to the Board's evaluation of the contractor's information under R17-3-202(A).
1. Inexperienced firms. An inexperienced firm will be limited to a maximum prequalification amount of $300,000 until the contractor has satisfactorily completed at least one transportation facilities construction contract for any public agency.
2. New firms. A new firm will be limited to a maximum prequalification amount of five times the firm's net worth.
3. Unknown firms. An unknown firm will be limited to a maximum prequalification amount of five times the firm's net worth or the amount of the largest transportation facilities construction contract it has successfully completed as a contractor for any other public agency, whichever is larger.
4. Known firms. A known firm will be limited to a maximum prequalification amount of ten times the firm's net worth. An unlimited prequalification amount may be granted if the product of ten times the firm's net worth exceeds $100 million.
5. All firms. Evidence of additional assets pledged in behalf of a contractor or letters from a contractor's surety company may be considered in establishing higher prequalification amounts than stated in subsections (F)(2) through (F)(4). A parent company that pledges assets in behalf of a contractor shall submit a financial statement.

G. Reconsideration of Prequalification Determination.
1. If a contractor is dissatisfied with the Board's decision, the contractor may request in writing a hearing, within 15 days of receiving the Board's decision. The hearing shall be conducted under A.R.S. § 41-1062. The letter shall indicate the basis for the request and shall provide supportive data. The Board shall review the request and accompanying information and decide on the request within 30 calendar days of its receipt.
2. If the contractor is still dissatisfied with the decision of the Board, the contractor may appeal to the State Engineer. The Board shall notify the contractor about the appeal procedures.

H. Issuance of Bidding Documents. A contractor shall not request bid documents for a contract for which it is not prequalified.

I. The Department may waive the prequalification requirement on an individual contract when it is in the best interest of the state. The advertisement for bids shall identify if prequalification is waived.

Historical Note
Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

R17-3-203. Reduced Prequalification Amounts or Disqualifications

A. The Board may reduce the prequalification amount of a contractor already prequalified or disqualify a contractor from bidding if a contractor:
1. Falsifies any document or misrepresents any material fact in the information furnished to the Department;
2. Fails to enter into a contract with the Department;
3. Defaults on a previous contract with any public agency;
4. Has an unsatisfactory work performance record with the Department on the basis of workmanship, competent superintendence, adequate and proper equipment, timely completion, or failure to submit required documentation for closing out a contract; or
5. Fails to provide notification to the Board, within 30 calendar days of occurrence, of any change in ownership, corporate officers or general partners, bankruptcy, receivership, court supervised reorganization, or the entry of a judgment in a judicial or administrative proceeding adverse to the contractor.

B. The Board shall notify a contractor in writing of its intention to reduce the prequalification amount or to disqualify a contractor. The Board's notice to reduce prequalification or to disqualify a contractor shall become a final determination unless the contractor requests a hearing with the Board within 20 calendar days after receiving such notification. The Board shall notify the contractor about the hearing procedures.

C. The contractor may appeal the Board's decision to the State Engineer. The Board shall notify the contractor about the appeal procedures.

Historical Note
Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

R17-3-204. Access to Department Prequalification Files

Prequalification files are considered to be strictly confidential. The files will be available only to:

1. Members of the Board,
2. The Director of the Department or any authorized agents of the Department,
3. Members of the Arizona State Transportation Board,
4. The division administrator of the Federal Highway Administration or any authorized representatives,
5. Agents of surety upon the filing of an application for bond duly signed by an authorizing party of the prequalified contractor,
6. Members of the Arizona State Board of Accountancy or their duly authorized representatives, and
7. The contractor that is the subject of the file.

Historical Note

Adopted effective March 3, 1987 (Supp. 87-1). Amended by final rulemaking at 8 A.A.R. 79, effective December 10, 2001 (Supp. 01-4).

ARTICLE 3. RELOCATION ASSISTANCE

Article 3, consisting of Sections R17-3-301 through R17-3-304, repealed; new Article 3, consisting of Sections R17-3-301 through R17-3-306, made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1).

R17-3-301. Relocation Assistance; Adoption of Federal Regulations

A. The Department incorporates by reference 49 CFR 24.1 through 24.10, 49 CFR 24.201 through 24.209, 49 CFR 24.301 through 24.305, 49 CFR 24.401 through 24.404, 49 CFR 24.501 through 24.503, 49 CFR 24.601 through 24.603, and Appendix A to Part 24 as it relates to Subparts A, C, D, and E, revised as of October 1, 2010, and no later amendments or editions, as amended by this Article. These sections apply to relocation assistance activity provided by the Department. The incorporated material is on file with the Arizona Department of Transportation and is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov or is available free of charge at http://gpo.gov.

B. The following definition applies for the purpose of this Article unless indicated otherwise.

"Department" means the Arizona Department of Transportation.

Historical Note

Former Rule, Right of Way Resolution 70-60. Former Section R17-3-12 renumbered without change as Section R17-3-301 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

R17-3-302. Relocation Assistance; 49 CFR 24, Subpart A - General

A. 49 CFR 24.2, "Definitions and acronyms" is amended as follows:

"Agency" means the Arizona Department of Transportation."

"Contribute materially" in paragraph (a)(7) is amended to read:

The term "contribute materially" means that during the two taxable years before the taxable year in which displacement occurs, a business contributed at least 33 1/3% of the owner's or operator's average annual gross income from all sources.

"Decent, safe, and sanitary dwelling" in paragraph (a)(8) is amended to read:

The term decent, safe, and sanitary dwelling means a dwelling that meets applicable housing and occupancy codes. However, any of the following standards that are not met by an applicable code shall apply unless waived for good cause by the federal agency or state agency funding the project. The dwelling shall:

Be structurally sound, weathertight, and in good repair;

Contain a safe electrical wiring system adequate for lighting and other devices; and

Contain heating and cooling systems capable of sustaining a healthful temperature for a displaced person, except in those areas where local climatic conditions do not require such systems.

"Initiation of negotiations" has the same meaning as prescribed in A.R.S. § 28-7141.

"Notice of intent to acquire or notice of eligibility for relocation assistance" as described in 49 CFR 24.203(d) and 49 CFR 24.203(b) means:

Written notice furnished to a person to be displaced that establishes eligibility for relocation benefits before the initiation of negotiations.

"Persons not displaced" in paragraph (a)(9)(ii)(A) is amended to read:

A person who moves before the initiation of negotiations, unless this requirement is waived by the Department due to a move necessitated for reasons beyond the person's control.

"Program or project" in paragraph (a)(22) is amended to read:

The phrase "program" or "project" means any displacing activity or series of activities undertaken by the Department, related to construction or reconstruction of a transportation facility, or a facility necessary for maintaining a transportation facility.

"Salvage value" in paragraph (a)(23) is deleted.

"Uneconomic remnant" in paragraph (a)(27) is deleted.

"Uniform Act" in paragraph (a)(28) is amended to read:

The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.).

"Utility facility" in paragraph (a)(31) is deleted.

"Utility relocation" in paragraph (a)(32) is deleted.

B. 49 CFR 24.5 "Manner of notices" is amended to read:

Each notice which the agency is required to provide to a property owner or occupant under this part shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person to contact for answers to questions or other needed help.

C. 49 CFR 24.9 "Recordkeeping and reports" is amended to read:

Paragraph (a) Records. The agency shall maintain adequate records of its acquisition and displacement activi-

ties in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least three years after each owner of a property and each person displaced from the property receives the final payment to which each owner of property is entitled under this part, or in accordance with the applicable regulations of the federal funding agency, whichever is later.

D. 49 CFR 24.10 "Appeals" is amended to read:

In addition to the provisions of A.R.S. §§ 41-1061 through 41-1067, the following provisions apply:

1. Actions that may be appealed. A person who believes the Department has failed to properly determine the person's eligibility for, or the amount of, a relocation payment may file a written appeal. A person shall include all contested issues in one appeal.
2. Process. To appeal, a person shall submit a letter stating name and address and the reasons for disagreeing with the Department's decision to the Right-of-Way Group, Arizona Department of Transportation, 205 S. 17th Ave., MD 612E, Phoenix, AZ 85007-3212.
3. Time limit. The person shall file the written appeal within 60 days after receiving notice of the Department's determination on the person's claim. The date the appeal request is received begins the official time limit constraints, as prescribed in subsections (D)(4) and (8) of this Section. Filing the appeal does not extend any eligibility periods or a required date to vacate a property.
4. Hearing date. Within 45 days of receipt of the appeal request, the Department shall set a mutually acceptable date for a hearing before a hearing officer.
5. Review of files. After making a written request to the Department at the address in subsection (D)(2) of this Section, the person may review and receive a copy of any non-confidential documentation contained in the Department's files regarding the person's appeal.
6. Scope of review. The Department shall consider and review the person's arguments, statements, and documents in support of the appeal, allowing reasonable latitude for the hearing of relevant material.
7. Right to representation. The person has a right to be represented by legal counsel or another representative in connection with the person's appeal, but solely at the person's own expense.
8. Determination. Within 30 days of the hearing, the hearing officer shall make a recommendation to the Chief Right-of-Way Agent. The Department shall promptly issue a written decision and provide a copy to the person by certified mail. The Department shall explain the basis on which its decision was made, and what relief, if any, is to be provided.
9. Judicial review. If the Department does not grant the relief requested, the Department shall advise the person of the right to seek judicial review.

Historical Note

Former Rule, Right of Way Resolution 71-42. Former Section R17-3-13 renumbered without change as Section R17-3-302 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

R17-3-303. Relocation Assistance; 49 CFR 24, Subpart C - General Relocation Requirements

49 CFR 24.206 "Eviction for cause" is amended to read:

1. Eviction for cause must conform to A.R.S. §§ 12-1171 through 12-1183. The Department may determine that a person who is an unlawful occupant (as defined in 49 CFR 24.2) is still eligible for advisory relocation assistance. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that the factors in subsections (1)(a) or (b) apply. The Department shall use the following factors to determine eligibility of an unlawful occupant for advisory relocation assistance:
   a. The person received an eviction notice before the initiation of negotiations and, as a result of that notice, is later evicted; or
   b. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
   c. The eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part;
   d. The person occupying the property and the owner dispute the issue of lawful occupancy;
   e. The duration of prior legal occupancy of the person occupying the property;
   f. Financial or medical hardship of the person occupying the property; or
   g. The cost of the relocation assistance is less than the cost of an appeal.
2. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available.
3. The state may initiate eviction proceedings due to:
   a. Unlawful activities being conducted on state-owned property,
   b. Willful destruction of state-owned property,
   c. Refusal to vacate state-owned property after all required notices to vacate have been delivered and appropriate assistance provided, or
   d. Failure to pay rent when there is no hardship.

Historical Note

Former Rule, Right of Way Resolution 71-69. Former Section R17-3-14 renumbered without change as Section R17-3-303 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1). Subsections numbered 2 and 3 were inadvertently combined as one paragraph in Supp. 13-1; subsection 3 has been corrected as filed at 19 A.A.R. 141 (Supp. 19-2).

R17-3-304. Repealed

Historical Note

Former Rule, Right of Way Resolution 70-51. Former Section R17-3-11 renumbered without change as Section R17-3-304 (Supp. 88-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section repealed by final rulemaking at 19 A.A.R. 141 effective March 10, 2013

(Supp. 13-1).

R17-3-305. Relocation Assistance; 49 CFR 24, Subpart E - Replacement Housing Payments

49 CFR 24.401 "Replacement housing payment for 180-day homeowner-occupants" in paragraph (d)(3) is amended to read:

The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. If a displaced person chooses to buy down the interest rate, the agency shall:

1. Require documents indicating the initial interest rate,
2. Require documents indicating the final interest rate, and
3. Limit reimbursement to the lower of the amount the displaced person actually paid to buy down the interest rate or the amount for which the person qualified under the established market interest rate.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

R17-3-306. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1075, effective May 6, 2003 (Supp. 03-1). Section repealed by final rulemaking at 19 A.A.R. 141, effective March 10, 2013 (Supp. 13-1).

ARTICLE 4. REPEALED

R17-3-401. Repealed

Historical Note

Former Rule, Traffic Engineering Resolution; Repealed effective June 18, 1979 (Supp. 79-3). New Section R17-3-05 adopted effective August 4, 1982 (Supp. 82-4). Former Section R17-3-05 renumbered without change as Section R17-3-401 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 2750, effective June 7, 2001 (Supp. 01-2).

R17-3-402. Repealed

Historical Note

Former Rule, ASHC Resolution. Repealed effective January 3, 1977 (Supp. 77-1). New Section R17-3-08 adopted effective March 25, 1982 (Supp. 82-2). Former Section R17-3-08 renumbered without change as Section R17-3-402 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 2748, effective June 7, 2001 (Supp. 01-2).

R17-3-403. Recodified

Historical Note

Former Rule, Right of Way Resolution 71-15. Former Section R17-3-09 renumbered without change as Section R17-3-403 (Supp. 88-4). Section recodified to A.A.C. R17-4-428 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1).

R17-3-404. Repealed

Historical Note

Adopted as an emergency effective April 13, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-2). Former Section R17-3-20 renumbered without change as Section R17-3-404 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 2750, effective June 7, 2001 (Supp. 01-2).

R17-3-405. Reserved

R17-3-406. Repealed

Historical Note

Former Rule, Traffic Engineering Report. Former Section R17-3-02 renumbered without change as Section R17-3-406 (Supp. 88-4). Section repealed by final rulemaking at 8 A.A.R. 849, effective February 8, 2002 (Supp. 02-1).

R17-3-407. Repealed

Historical Note

Former Rule, ASHC Resolution; Former Section R17-3-06 repealed, new Section R17-3-06 adopted effective April 25, 1978 (Supp. 78-2). Former Section R17-3-06 renumbered without change as Section R17-3-407 (Supp. 88-4). Section repealed by final rulemaking at 8 A.A.R. 849, effective February 8, 2002 (Supp. 02-1).

R17-3-408. Repealed

Historical Note

Former Rule, General Order 21. Former Section R17-3-08 renumbered without change as Section R17-3-408 (Supp. 88-4). Section repealed by final rulemaking at 8 A.A.R. 849, effective February 8, 2002 (Supp. 02-1).

ARTICLE 5. HIGHWAY ENCROACHMENTS AND PERMITS

R17-3-501. Definitions

In this Article, unless otherwise defined, these terms have the following meanings:

"Abutting property" means real property or interest in real property bordering a state highway right-of-way.

"Adopt-a-highway" means a Department program that allows a group of persons access to a state highway right-of-way to conduct litter pickup on a designated portion of the state highway.

"Airspace" means the space above real property.

"Applicant" means a person or entity seeking to obtain an encroachment permit.

"Department" means the Arizona Department of Transportation.

"District Office" means one of the Department's Engineering and Maintenance district offices.

"Encroachment" means any use of, intrusion upon, or construction of improvement within a state highway right-of-way by any person or entity other than the Department for any purpose, temporary or fixed, other than public travel authorized by state statute.

"Encroachment owner" means the person or entity responsible for creating or maintaining an encroachment on a state highway right-of-way.

"Encroachment permit" means a written approval granted by the Department for construction of a fixed or temporary improvement within a state highway right-of-way, or for any activity requiring the temporary use of or intrusion upon a state highway right-of-way.

"Engineering stationing" means the Department identification system to identify the location of a state highway feature.

"Improvement" means any constructed facility or object, or alteration to any existing physical facility or object, or change in the elevation, slope, or drainage of a state highway right-of-way.

"Permittee" means a person or entity to whom the Department issues an encroachment permit, and who is responsible for meeting the obligations, responsibilities, and specifications stated in the encroachment permit.

"Right-of-way" means the real property or interest in real property on which state transportation facilities and appurtenances to the facilities are constructed or maintained.

"Special event" means any temporary organized or supervised activity that could affect the normal operation of a state highway.

"State highway" has the meaning prescribed in A.R.S. § 28-101(47).

Historical Note
New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-502. Applicability

A. A person or entity shall not encroach on a state highway right-of-way without obtaining an encroachment permit.

B. Only the following types of encroachments qualify for a Department encroachment permit:
1. Access improvements to abutting properties, consistent with subsection (C)(6);
2. Utility construction and maintenance, including underground and overhead;
3. Drainage improvements;
4. Airspace encroachments, such as overhanging signs, awnings, and banners;
5. Landscaping;
6. Special events;
7. Removing or improving an existing encroachment;
8. Rest area coffee breaks;
9. Change in the principal activity or function of an abutting property where an access or utility encroachment has been constructed;
10. Adopt-a-highway;
11. Activities, such as surveying, performed to compile information about physical features in the highway right-of-way;
12. Traffic control unrelated to the types of encroachments listed above for specific incidents, such as hazardous material removal, accident clean-up, or check points by government enforcement; and
13. For such uses as the Director specifies.

C. An encroachment not listed under subsection (B) is ineligible to qualify for an encroachment permit and is an unauthorized encroachment. An unauthorized encroachment also includes:
1. Outdoor advertising signs, except as an overhang in subsection (B)(4);
2. Parking areas;
3. Sales of any service or thing;
4. Bicycling, walking, horseback riding, or other activities prohibited under A.R.S. § 28-733;
5. Any commercial or industrial activity; or
6. Access to undeveloped property abutting a state highway, unless the applicant demonstrates a plan for:
   a. Immediate development of the property evidenced by construction plans or building permits, or
   b. Continuing maintenance of the undeveloped property.

D. A new owner of an existing permitted encroachment shall apply for an encroachment permit in the new owner's name within 30 days from the date of purchase of the abutting real property.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-503. Who Can Apply for an Encroachment Permit

A. Any person or entity, other than the Department, seeking an encroachment upon a state highway right-of-way shall apply to the Department for an encroachment permit.

B. Any person or entity is eligible to apply for an encroachment permit, except for an encroachment involving:
1. Access, only an abutting property owner is eligible to apply.
2. Landscaping and aesthetic enhancements, only an abutting property owner or a political subdivision is eligible to apply.
3. Utility installation, only an ultimate owner who will be responsible for maintenance and liability of the utility after it is put into service is eligible to apply. An ultimate owner includes a utility company, improvement district, political subdivision, or abutting property owner. A contractor or developer may apply if the contractor or developer provides evidence that an ultimate owner has approved plans and agrees to obtain an encroachment permit as a new owner upon completion of the utility installation.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-504. General Application Procedures

A. An applicant shall obtain an encroachment permit application form from the District Office serving the Department's district in which the proposed encroachment will be located.

B. An applicant shall include the following information on a District Office's encroachment permit application:
1. Name, address, city, state, zip code, telephone number, and signature of proposed encroachment owner;
2. Name, address, city, state, zip code, telephone number, and signature of applicant, if different from proposed encroachment owner;
3. Applicant's legal relationship to proposed encroachment owner;
4. City nearest to the proposed encroachment;
5. Location of proposed encroachment from the nearest milepost (in feet), including state highway route number, side of highway, and engineering stationing (if applicable); and
6. Purpose of proposed encroachment, as listed in R17-3-502(B), and a description of the proposed work or activity in the right-of-way.

C. By signing an application, an applicant or proposed encroachment owner, or both, agree to accept the following general obligations and responsibilities:
1. Assume all legal liability and financial responsibility for the encroachment activity for the duration of the permit;

2. Be responsible for any repair or maintenance work to the encroachment for the duration of the permit;
3. Comply with the Department's traffic control standards;
4. Obtain written approval from the abutting property owner if the encroachment encroaches on abutting property;
5. Upon notice from the Department, repair any aspect or condition of the encroachment that causes danger or hazard to the traveling public;
6. Remove the encroachment and restore the right-of-way to its original or better condition if the Department cancels the encroachment permit, and terminates all rights under the permit;
7. Reimburse the Department for costs incurred or deposit with the Department money necessary to cover all costs incurred for activities related to the encroachment, such as inspections, restoring the right-of-way to its original or better condition, or removing the encroachment;
8. Notify a new owner to apply for an encroachment permit, as required by R17-3-502(D);
9. Apply for a new encroachment permit if the use of the permitted encroachment changes;
10. Keep a copy of the encroachment permit at the work site or site of encroachment activity;
11. Construct the encroachment according to plans that the Department approves as part of the final permit;
12. Obtain required permits from other government agencies or political subdivisions;
13. Remove any defective materials, or materials that fail to pass the Department's final inspection, and replace with materials the Department specifies.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-505. Supporting Documentation

An applicant for an encroachment permit shall provide supporting documentation relevant to the type of encroachment activity and necessary to allow the Department to analyze the proposed encroachment's impact on the state highway and right-of-way, using such criteria as:

1. Whether the proposed encroachment is for commercial or residential access;
2. The proposed encroachment's impact on roadway features within the right-of-way;
3. The amount of traffic the proposed encroachment will generate;
4. Duration of the proposed encroachment;
5. The proposed encroachment's potential to disrupt traffic or change traffic patterns;
6. The surrounding terrain and physical features of the right-of-way and the abutting property; and
7. The number, size, and intended use of any buildings that would be accessed via the proposed encroachment.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-506. Encroachment Permit Requirements

A. An encroachment permit consists of the materials submitted by an applicant under R17-3-504 and R17-3-505, and additional requirements from the Department as described in subsection (B). An encroachment permit will list in detail the requirements with which the permittee shall comply in order to perform the requested encroaching activity. Some of the requirements are general and apply to every encroachment permit. Others are specific to a particular encroachment activity.

B. The Department shall set encroachment permit requirements to:

1. Maintain the integrity of the Department's right-of-way and transportation facilities;
2. Mitigate the risk to traffic safety;
3. Improve traffic movement, efficiency, and capacity;
4. Mitigate adverse drainage on state property or abutting property affecting state property;
5. Mitigate environmental impacts;
6. Mitigate maintenance costs to transportation facilities;
7. Mitigate potential liability for the Department or the state; and
8. Mitigate potential harms to national or state security.

C. By accepting an encroachment permit, a permittee agrees to the requirements described in the permit. If the permittee disagrees with the requirements, the permittee shall return the permit immediately to the District Office.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-507. Review Procedures

A. The Department shall conduct an administrative completeness review and substantive review of an application for an encroachment permit under A.R.S. §§ 41-1072 through 41-1077 and A.A.C. R17-1-102.

B. The Department shall decide whether to grant an encroachment permit based solely on the documents and information before the Department.

C. Decision.

1. The Department shall approve an encroachment permit if:
   a. The proposed encroachment use is lawful,
   b. The applicant provides complete and accurate information,
   c. The proposed encroachment use qualifies under R17-3-502(B), and
   d. The applicant agrees to comply with the Department's requirements as set out in the permit.
2. The Department shall deny an encroachment permit application if:
   a. The proposed encroachment use is unlawful,
   b. The applicant provides incomplete or inaccurate information,
   c. The proposed encroachment use does not qualify under R17-3-502(B), or
   d. The permittee disagrees with the requirements in the permit.
3. An applicant may appeal the Department's denial decision on an encroachment permit application as prescribed in R17-3-509.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-508. Unauthorized Encroachments; Enforcement Actions

A. An encroachment is unauthorized if:

1. A permittee fails to comply with the permit requirements,
2. A permittee provides false or inaccurate information on the encroachment permit application,

3. A person or entity fails to obtain an encroachment permit, or
4. The encroachment is unauthorized under R17-3-502(C).

B. An encroachment owner shall remove any unauthorized encroachment at the owner's own cost.

C. After considering the totality of the circumstances and in consultation with the Office of the Attorney General, the Department may refer a matter to the Office of the Attorney General according to A.R.S. §§ 28-7053 and 28-7054 for:
1. Enforcement against the owner of an unauthorized encroachment, or
2. Recovery of costs from the encroachment owner for the Department removing an unauthorized encroachment if the encroachment owner fails to remove the unauthorized encroachment.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-509. Hearings
The Department shall inform an applicant or permittee of the hearing procedures when the Department:
1. Denies an application for an encroachment permit, or
2. Determines that an encroachment is unauthorized.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

ARTICLE 6. TELECOMMUNICATION FACILITIES

R17-3-601. Definitions
In addition to the definitions provided under A.R.S. §28-7381, the following terms apply to this Article unless otherwise specified:

"At-grade" means roadways, intersections, or facilities at the same elevation or level.

"Clear zone" means a specific distance from the edge of a travel lane free of above ground obstacles as determined by the Department and in accordance with the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide.

"Controlled access" has the same meaning as a controlled access highway as defined in A.R.S. § 28-601.

"Department" has the same meaning as defined in A.R.S. § 28-101.

"Dig Once" means reducing the number and scale of excavations when installing telecommunication facilities in highway rights-of-way.

"Encroachment permit" has the same meaning as defined in R17-3-501.

"Guideline for Accommodating Utilities on Highway Rights-of-Way" means the guidelines and procedures adopted by the Department for the accommodation of utilities on highway rights-of-way.

"Interstate System" has the same meaning as defined in A.R.S. § 28-7901.

"Lease agreement" means the written agreement between the Department and the provider, which authorizes the provider to utilize spare conduit and related facilities of the Department subject to the terms and conditions outlined in the agreement and this Article.

"New installation" means an initial installation on a highway right-of-way except in the event of a relocation required by the Department.

"Right-of-way" has the same meaning as defined in A.R.S. § 28-101.

"Right-of-way occupancy rate" means the compensation from a provider for longitudinal access to the right-of-way of a state highway for the purpose of installing telecommunication facilities as authorized under A.R.S. § 28-7385.

"State" means the state of Arizona.

"State highway" has the same meaning as defined in A.R.S. § 28-101.

"State Milepost System" means the markers placed on the highway at one-mile intervals that indicate the distance through the state.

"Uncontrolled access" means a highway to which owners or occupants of abutting lands and other persons have a legal right of access.

"Telecommunication use and occupancy agreement" means the written agreement between the Department and the provider allowing the provider longitudinal access of highway right-of-way for its telecommunication facilities or private line subject to the terms and conditions outlined in the agreement and this Article.

Historical Note
New Section made by exempt rulemaking at 28 A.A.R. 3372 (October 21, 2022), effective January 1, 2023 (Supp. 22-3).

R17-3-602. Telecommunication Use and Occupancy Agreement; Time-frames; Compensation for Longitudinal Access to the Right-of-Way

A. A provider must enter into a telecommunication use and occupancy agreement with the Department and obtain an encroachment permit, as prescribed under Article 5 of this Chapter, before being granted longitudinal access for new installation of a telecommunication facility. This Section does not apply to a telecommunication facility with an encroachment permit approved before January 1, 2023.

B. A provider seeking to enter into a telecommunication use and occupancy agreement shall complete and provide the following information on a telecommunication use and occupancy agreement application provided by the Department at www.azdot.gov:
1. Name of provider;
2. The point of contact's information, which includes name, telephone number, and email address;
3. A description of the proposed work or activity in the right-of-way or facilities; and
4. A map, drawing, or geographical description of the proposed telecommunication facility installation, including the starting and ending milepost to the nearest tenth of a mile, state highway number, the cardinal direction of the highway, the number and size of conduits, and accompanying telecommunication facility locations.

C. The Department shall, within five calendar days of receiving an application under subsection (B), provide written notice to the provider acknowledging receipt of the application:
1. If the application is complete, the notice shall acknowledge receipt of a complete application and indicate the date the Department received the complete application; or

2. If the application is incomplete, the notice shall indicate the current date and include an itemized list of all additional information the provider must provide to the Department before the application can be considered complete and subsequently processed.

D. A provider with an incomplete application shall respond to the notice provided by the Department under subsection (C)(2) within 15 calendar days after the date indicated on the notice or the Department may deny the application.

E. The Department shall render a decision on the application within 15 calendar days after the date on the notice the Department gave to the provider under subsection (C)(1) acknowledging receipt of a complete application.

F. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames:
1. Administrative completeness review time-frame: five calendar days.
2. Substantive review time-frame: 10 calendar days.
3. Overall time-frame: 15 calendar days.

G. A provider shall pay an annual right-of-way occupancy rate as compensation to the Department for longitudinal access to a highway right-of-way for new installations of telecommunication facilities, including overhead, surface, or underground, in accordance with A.R.S. § 28-7385.
1. The annual right-of-way occupancy rate schedule is as follows:
   a. Interstate System: $1.00 per linear foot of longitudinal access.
   b. Controlled Access Highways (non-interstate): $0.50 per linear foot of longitudinal access.
   c. Uncontrolled Access Highways: $0.25 per linear foot of longitudinal access.
2. At the beginning of each calendar year, starting January 1, 2024, the cost per linear foot as prescribed in subsection (G)(1), increases at a rate of 2% per calendar year. The new annual right-of-way occupancy rate applies to any new or renewed telecommunication use and occupancy agreements established within that given year.
3. The annual right-of-way occupancy rate, established at the time of signing the telecommunication use and occupancy agreement, shall be the rate for each year of a 20-year or 30-year agreement.
4. The distance is measured using the State Milepost System, rounded to the nearest tenth of a mile and converted to a linear foot value.
5. The total amount of the annual right-of-way occupancy rate is determined by using the following calculation: cost per linear feet x distance = total annual right-of-way occupancy rate.
6. The Department shall receive monetary compensation in the form of an annual or lump sum payment, unless an in-kind compensation or combination of in-kind and monetary compensation is agreed upon by the Department and the provider.
   a. Annual monetary compensation. The provider shall pay the total annual right-of-way occupancy rate established at the time of signing the telecommunication and occupancy use agreement and at the time of signing any renewals.
   b. Lump-sum monetary compensation. The provider shall pay in accordance with the following:
      i. The total annual right-of-way occupancy rate is multiplied by the number of years of the agreement.
      ii. A discounted rate of 10% is applied utilizing net present value calculation.
   c. In-kind compensation.
      i. Telecommunication facilities shall be valued on a present value basis at the estimated, reasonable cost to the provider for procuring and installing such telecommunication facilities. The in-kind value shall be agreed upon, between the Department and provider, in the telecommunication use and occupancy agreement.
      ii. The Department shall provide the provider with a list of the specific telecommunication facilities and services for consideration as in-kind compensation. The value of such in-kind compensation shall be subtracted from the total amount of monetary compensation due for occupancy of the right-of-way and the remaining balance, if any, shall be remitted as monetary compensation.
      iii. Any telecommunication facilities acquired as in-kind compensation shall be used exclusively for the further development of telecommunications that serve state purposes and may not be sold or leased in competition with providers.
      iv. The provider maintains ownership and is responsible for maintenance of the in-kind compensation provided, however, the associated costs will be agreed upon in the telecommunication use and occupancy agreement.
   d. Combination of monetary and in-kind compensation. The provider will pay the total annual right-of-way occupancy rate in accordance with subsections (G)(6)(a) through (c), as applicable, and as agreed upon by the Department and the provider.
7. The payment of the annual right-of-way occupancy rate will be made as follows:
   a. For monetary compensation, the provider shall pay the total annual right-of-way occupancy rate to the Department within 30 calendar days of signing the telecommunication use and occupancy agreement and any renewals.
   b. For in-kind compensation, the agreement shall set forth the timeline for the Department to receive agreed upon telecommunication facilities.

H. By signing a telecommunication use and occupancy agreement, a provider agrees to accept the following general obligations and responsibilities:
1. Complying with the encroachment permit rules in Article 5 of this Chapter;
2. Complying with the terms and conditions contained in the telecommunication use and occupancy agreement and encroachment permit documents for installation, operation, maintenance, and relocation of telecommunication facilities;
3. Not having exclusive access or rights to the right-of-way;
4. Having the term length of the telecommunication use and occupancy agreement to be for one year, 20 years, or 30 years with an option to renew the agreement at the current applicable starting rate for the first year of a new agreement or renewal; the rate will be increased annually if the renewal is for a one-year period, otherwise pursuant to the terms of a new 20-year or 30-year agreement; and

5. Terminating the telecommunication use and occupancy agreement due to removal of facilities from the right of way.
   a. For any monetary compensation, the provider shall receive a prorated refund based on the number of months remaining in the term agreement.
   b. For any in-kind compensation, the access to facilities or services provided will terminate at the time of the removal of the facilities.

Historical Note
New Section made by exempt rulemaking at 28 A.A.R. 3372 (October 21, 2022), effective January 1, 2023 (Supp. 22-3).

R17-3-603. Installation, Maintenance, Operation, and Relocation of Telecommunication Facilities

A. Installations of telecommunication facilities may be permitted under the following conditions:
1. The installation does not adversely affect the safety, design, construction, operation, maintenance or stability of the highway;
2. The installation does not interfere with or impair the planned future expansion of the highway;
3. The installation does not interfere with or impair planned future Department-owned telecommunication facilities projects;
4. In accordance with Dig Once, the Department may require providers to adhere to Dig Once when installing telecommunication facilities into the same general location on the highway system and providers shall coordinate their planning and work, install in a joint trench, and equitably share costs;
5. The Department does not incur any unreimbursed additional expense or maintenance costs associated with the telecommunication facility installation, relocation, or removal;
6. The Department and state are not liable for any claims, demands, costs or expenses, including all legal expenses, for loss, damages or injury to any person or property, including third-party persons or property, due to the telecommunication facilities' use of the rights-of-way excluding claims made pursuant to A.R.S. § 28-7382;
7. At-grade or underground telecommunication facility items requiring access, such as conduit, fiber, splice locations, vaults, manholes, and pull boxes may be allowed inside the control of access;
8. Above ground telecommunication facility items such as cabinets, node buildings, amplifiers, pedestals, and regeneration huts will be located where they do not need to be accessed from the travel lane such as traffic interchanges, frontage roads, and intersections;
9. Above ground telecommunication facilities will not be installed within the clear zone; and
10. The location of longitudinal telecommunication facilities are as close to the right-of-way line as practical or as determined by one of the Department's Engineering and Maintenance district offices.

B. Telecommunication facilities may be installed longitudinally within a controlled access highway when it meets the requirements as outlined in the ADOT Guideline for Accommodating Utilities on Highway Rights-of-Way.

C. Pursuant to A.R.S. § 28-7384, the Department requires the removal or relocation of telecommunication facilities located on the highway right-of-way to accommodate operations and highway projects at the provider's expense. The Department may require removal or relocation of such telecommunication facilities upon expiration or earlier termination of the telecommunication use and occupancy agreement, encroachment permit, or other agreements at the provider's expense.

Historical Note
New Section made by exempt rulemaking at 28 A.A.R. 3372 (October 21, 2022), effective January 1, 2023 (Supp. 22-3).

ARTICLE 7. HIGHWAY BEAUTIFICATION

R17-3-701. Outdoor Advertising Control

A. Purpose. The purpose of this subsection is to present the definitions of specialized terms used in describing outdoor advertising signs and matters relating to outdoor advertising signs. Terms used in this rule are defined as follows:
1. "Abandoned sign" means a sign for which neither the sign owner nor the landowner claim any responsibility.
2. "Back-to-back sign" means a sign that carries faces attached on each side of the structure and is read from opposite directions.
3. "Directional" means signs containing directional information about public places owned or operated by federal, state, or local government or their agencies; publicly or privately owned natural phenomena, historic, cultural, scientific, educational, religious, and rural activity sites; and areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.
4. "Directional and other official signs and notices" includes only official signs and notices, public utility signs, service club and religious notices, public service signs, and directional signs.
5. "Double-faced sign" means a sign that has two faces facing in the same direction.
6. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish.
7. "Face" means the surface of an outdoor advertising structure on which the design is posted or painted, usually made of galvanized metal sheets, fiberboard, plywood or plastic.
8. "Federal or state law" means a federal or state constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a state or federal agency or a political subdivision of a state pursuant to a federal or state constitution or statute.
9. "Illegal sign" means a sign that was erected or maintained, or both, in violation of the state law.
10. "Intended to be read from the main-traveled way" is defined by any of the following criteria:
    a. More than 80% of the average daily traffic (as determined by traffic counts) viewing the outdoor advertising is traveling in either or both directions along the main-traveled way.
    b. Message content is of such a nature that it would be only of interest for the traffic using the main-traveled way.
    c. The sales value of the outdoor advertising is directly attributable to advertising circulation generated by traffic along the main-traveled way.
11. "Interchange" means a junction of two or more highways by a system of separate levels that permit traffic to pass

from one to another without the crossing of traffic streams.

12. "Landmark sign" means a sign of historic or artistic significance that existed on October 22, 1965, which may be preserved or maintained as determined by the Director and approved by the Secretary of Transportation.
13. "Lease" means an agreement, oral or in writing, by which possession or use of land or interests in land is given by the owner to another person for a specified period of time.
14. "Maintain" means to allow to exist, including such activities necessary to keep the sign in good repair, safe condition, and change of copy.
15. "Nonconforming sign" means a sign that was lawfully erected but does not comply with the provisions of state law or state laws passed at a later date or later fails to comply with state law or state regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.
16. "Normal maintenance (nonconforming sign)" means the maintenance customary to keep a sign in ordinary repair, upkeep or refurbishing. The maintenance does not include:
    a. Maintenance that exceeds 50% of the appraised value using current appraisal schedules for a sign, or
    b. Repairs to a sign damaged to such an extent that 60% or more of the uprights require replacement for wood uprights, or 30% or more of the length of each upright support above ground requires replacement for metal uprights.
17. "Obsolete sign" means a directional or other official sign the purpose of which is no longer pertinent.
18. "Official signs and notices" means signs and notices, other than traffic regulatory signs and notices, erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies are official signs.
19. "Off-premise sign" means an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which the activity or service occurs or the product is sold or manufactured.
20. "On-premise sign" means any sign that meets the following requirements (such signs are not controlled by state statutes):
    a. Premises. The sign must be located on the same premises as the activity or property advertised.
    b. Purpose. The sign must have as its purpose:
        i. The identification of the activity, or its products or services, or
        ii. The sale or lease of the property on which the sign is located, rather than the purpose of general advertising.

c. In the case of an on-premise sign advertising an activity, the premises must include all actual land used or occupied for the activity, including its buildings, parking, storage and service areas, streets, driveways and established front, rear, and side yards constituting an integral part of such activity, provided the sign is located on property under the same ownership or lease as the activity. Uses of land that serve no reasonable or integrated purpose related to the activity other than to attempt to qualify the land for signing purposes are not premises. Generally these will be inexpensive facilities, such as picnic grounds, playgrounds, walking paths, or fences.

21. "Parkland" means any publicly owned land that is designated or used as a public park, recreation area, wildlife or waterfowl refuge or historic site.
22. "Public service signs" means signs that are located on school bus stop shelters and that:
    a. Identify the donor, sponsor, or contribution of the shelters;
    b. Contain safety slogans or messages, which must occupy not less than 60% of the area of the sign;
    c. Contain no other message;
    d. Are located on school bus shelters that are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and
    e. May not exceed 32 square feet in area. Not more than one sign on each shelter shall face in any one direction.
23. "Public utility signs" means warning markers that are customarily erected and maintained by publicly or privately owned public utilities to protect their facilities.
24. "Re-erection" means the placing of any sign in a vertical position subsequent to its initial erection. Re-erection shall only occur in the event the sign has been damaged by tortious acts, or in the course of normal maintenance.
25. "Scenic area" means any area of particular scenic beauty or historical significance as determined by the federal, state, or local officials having jurisdiction of the area, and includes interests in land that have been acquired for the restoration, preservation, and enhancement of scenic beauty.
26. "Scenic overlook or rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.
27. "Service club and religious notices" means signs and notices, whose erection is authorized by law, relating to meetings of nonprofit service clubs or charitable associations, or religious service, that do not exceed eight square feet in area.
28. "V-type signs" means signs that are oriented at an angle to each other, the nearest points of which are not more than 10 feet apart.
29. "Within the view of and directed at the main-traveled way" means any sign that is readable from the main-traveled way for more than five seconds traveling at the posted speed limit or for such a time as the whole message can be read, whichever is less.

B. Outdoor advertising permit application procedure.

1. Purpose. The purpose of this subsection is to present the procedures to be followed by applicants in requesting permits for the erection of outdoor advertising facilities.
2. Permit form and fee required. Each application for a permit to erect an outdoor advertising facility must be made on the appropriate Arizona Department of Transportation form and shall be accompanied by a check or money order in the amount of $20.00 payable to the Arizona Department of Transportation.

a. The initial application fee shall be valid for a period of one year from date of issuance. It shall be renewable annually upon payment of a $5.00 fee.
b. Renewal fees will become delinquent 30 days after the annual renewal date. On becoming delinquent, such sign structures will be in violation and a new initial application fee of $20.00 will be required.

3. Applications mailed to maintenance permit engineer. Applications for outdoor advertising permits should be mailed to: Arizona Department of Transportation, Intermodal Transportation Division; 206 South 17th Avenue; Phoenix, Arizona 85007; Attention: Maintenance Permits Section. Assistance to applicants is available at District offices.
4. Separate application for each sign. Each outdoor advertising sign, display or device requires a separate application with fee. All required information describing the location of the sign, the sign qualification standards, and the permitted area identification shall be completely entered on the permit form.
5. Legal description of sign site required. Applicants shall be required to obtain a certification from the governing zoning authority certifying that the zoning is correct for the legal description of the proposed sign location. In cases where the legal description is listed incorrectly on the application, a new certification must be obtained for the correct legal description. Legal descriptions shall adequately describe the property for which the application is made.
6. Location diagram required. Applicants shall submit a location diagram indicating highway route number and such physical features as: buildings, bridges, culverts, poles, mileposts and other stationary land marks necessary to adequately describe the location. The sketch will also indicate the distance in feet the sign is to be erected from the nearest milepost or a street intersection and other off-premise signs in the same vicinity.
7. Applicants must mark site locations. Applicants are required to place an identifiable device or object bearing applicant's name at the proposed sign location to aid field inspectors in site evaluations.
8. Landowner's permission mandatory. Applicants shall be required to obtain a signed certification stating that the applicant has the permission of the landowner to erect the sign at the noted legal description, or in lieu of the signed certification, furnish a copy of an executed lease.
9. Each pending application field checked. Each pending application will be field checked for compliance with the state act and regulations by the district. The findings of the field check will be forwarded to the Maintenance Permit Engineer, Maintenance Section, for final examination and, if approved, permit issuance.
10. Noncompliance. Each application for a permit to erect an outdoor advertising facility which does not comply with all requirements of the law and the Arizona Department of Transportation regulations, will be denied and the application fee may be retained by the state. Exception will be made in cases where applicants did not have knowledge of previous applications or permits for the same site. An additional $20.00 fee shall be added to the regular permit fee for signs illegally erected prior to the issuance of a permit.
11. Permit decals on sign structures. Applicants shall affix permit decals on a permanent surface near the portion of the sign structure closest to the main-traveled way and clearly visible from the roadway. Permit decals to replace any which have been issued and were improperly affixed, lost or destroyed, whether before or after attaching to the sign structure, may be purchased at a cost of $5.00. Signs bearing permit decals for signs other than the sign for which they were issued shall be in violation.
12. Forfeiture of permit fee. Outdoor advertising facilities for which permits have been issued shall be erected within 120 days and shall bear the official permit identification issued for the specific facility. If the applicant mails a written request for extension of time prior to expiration of the 120 days, an additional 60-day extension may be granted. Any permit canceled because no sign was erected within the prescribed time will result in forfeiture of the $20.00 fee.
13. Denial of permit renewals. An existing permit will not be renewed for an approved location on which no sign structure exists.
14. Removal and re-erection time limits. If an outdoor advertising sign is removed from a permitted location for any reason, the permit shall expire within 30 days from date of removal, except that the permittee may notify the Arizona Department of Transportation, Intermodal Transportation Division; Maintenance Permits Section, of intent to re-erect which will allow 120 days for re-erection. Failure to re-erect which will allow 120 days for re-erection. Failure to re-erect within the 120 days allowed will cancel the existing permit.
15. Transfer of permits. Permits are transferable upon sale of sign provided a new owner furnishes the Arizona Department of Transportation with notification of sale within 30 days after date of sale.
16. Calendar days. All references to days made in this permit application procedure, as well as those references in all rules and regulations applying to outdoor advertising control, shall mean calendar days.

C. Administrative rules.

1. Purpose. The purpose of this subsection is to present administrative rules developed by the Arizona Department of Transportation for control of outdoor advertising.
2. Restrictions on rights-of-way use. No sign shall be erected or maintained from or by use of interstate highway rights-of-way. Any observed action of this type will result in cancellation of the permit. Signs may be erected and maintained from primary and secondary highways only if no other access is available and an encroachment permit is issued.
3. Nonconforming signs shall be in violation if:
   a. A sign is enlarged (increased in any dimensions of the sign face or structural support),
   b. A sign is replaced (an existing sign is removed and replaced with a completely different sign),
   c. A sign is rebuilt to a different configuration or material composition beyond normal maintenance,
   d. A sign is relocated (moved to a new position or location without being lawfully permitted), or
   e. A sign which was previously non-illuminated has lighting added.
4. Commercial or industrial activities. Commercial or industrial activities which define a business area, or an unzoned commercial or industrial area must be in operation at the time the permit application is made. Should any commercial or industrial activity, which has been

used in defining or delineating a business area, or an unzoned commercial or industrial area, cease to operate for a period of six continuous months, any signs qualified by such activity shall become nonconforming.

5. On premise. Should any activity which has been used in defining an on-premise sign cease to operate for a period of six continuous months any signs qualified by that activity shall be considered as off premise and will require appropriate permits. If the signs are then not permitable they will be in violation.
6. Municipal limit between signs. When a municipal limit falls between signs the spacing requirement shall be 300 feet between signs on primary or secondary highways.
7. Proposed interstate alignment locations. Signs existing or to be erected on primary or secondary highway systems which have been declared by the Director of Transportation as an interstate freeway alignment prior to construction of such interstate or freeway shall be classified as though the Interstate or Freeway already exists, requiring spacing criteria for Interstate or other freeways.
8. Double-faced, back-to-back, and V-type signs. Double-faced, back-to-back and V-type sign structure permits will be limited to a single sign ownership for each site. No more than two faces will be allowed facing each direction of travel. Double-faced signs shall not exceed 350 square feet per face. V-type signs will be limited to a 10’ spacing between faces at the apex. V-type sign spacing from other signs shall be measured from the middle of the apex.
9. Multifaced community signs. Local chambers of commerce may obtain permits to erect signs with more than two faces. These signs shall not exceed 1,200 square feet in area with a maximum overall vertical facing of 25 feet and a maximum overall horizontal facing of 60 feet, including border and trim, and excluding base or apron supports and other structural members. All other laws, rules and regulations will apply to multifaced community signs as to other off premise signs.
10. New sign making existing sign nonconforming. If a new sign which would otherwise be conforming will make an existing sign nonconforming, the new sign shall not be allowed.
11. Hearing requests. The land owner or sign owner may request a hearing in connection with a permit application denied or other action taken by the Arizona Department of Transportation in connection with the rules prescribed in this Section. Within seven days after notice of the action is mailed or posted, the land owner or sign owner may make written request for a hearing on the action. The Director of the Department of Transportation shall designate a hearing officer, who shall be an administrative employee of the Department of Transportation, to conduct and preside at the hearings. When a hearing is requested, the hearing shall be held within 30 days after the request, and the party requesting the hearing shall be given at least five days notice of the time of the hearing. All hearings shall be conducted at Department of Transportation administrative offices. A full and complete record and transcript of the hearing shall be taken. The presiding officer shall within 10 days after the hearing make a written determination of the presiding officer’s findings of fact, conclusions and decision and shall mail a copy of the same, by certified mail, to the owner or the party who requested the hearing.
12. Landmark signs. The Director will submit a one-time declaration listing all landmark signs to the Secretary of Transportation. The preservation of these signs would be consistent with the purposes of state highway beautification laws.
13. Blanked out or discontinued nonconforming signs. When an existing nonconforming sign ceases to display advertising matter for a period of one year the use of the structure as a nonconforming outdoor advertising sign is terminated.
14. Vandalized signs. Legal nonconforming signs may be rebuilt to their original configuration and size when they are destroyed due to vandalism and other criminal or tortious acts.

D. Standards for directional and other official signs.

1. Purpose. The purpose of this subsection is to present standards applicable to directional and other official signs.
2. Scope and application. The standards presented in this Chapter apply to directional and other official signs and notices which are erected and maintained within 660 feet of the nearest edge of the right-of-way of the interstate, federal-aid primary and secondary highway systems and which are visible from the main-traveled way of the systems. These types of signs must conform to national standards, promulgated by the Secretary of Transportation under authority set forth in 23 U.S.C. 131(c). These standards do not apply, however, to directional and other official signs erected on the highway right-of-way.
3. Standards for directional signs. The following apply only to directional signs:
    a. General. The following signs are prohibited:
        i. Signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities.
        ii. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device or obstruct or interfere with the driver’s view of approaching, merging, or intersecting traffic.
        iii. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
        iv. Obsolete signs.
        v. Signs which are structurally unsafe or in disrepair.
        vi. Signs which move or have any animated or moving parts.
        vii. Signs located in rest areas, parklands or scenic areas.
    b. Size. No sign shall exceed the following limits, which include border and trim, but exclude supports.
        i. Maximum area -- 150 square feet.
        ii. Maximum height -- 20 feet.
        iii. Maximum length -- 20 feet.
    c. Lighting. Signs may be illuminated, subject to the following:
        i. Signs which contain, include, or are illuminated by any flashing, intermittent or moving light or lights are prohibited.
        ii. Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway or which are of

such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

iii. No sign may be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

d. Spacing.

i. Each location of a directional sign must be approved by the Arizona Department of Transportation.

ii. No directional sign may be located within 2,000 feet of an interstate, or intersection at grade along the interstate system or other freeways (measured along the interstate of freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

iii. No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic area.

(1) No two directional signs facing the same direction of travel shall be spaced less than one mile apart;

(2) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected along a single route approaching the activity;

(3) Directional signs located adjacent to the Interstate System shall be within 75 air miles of the activity; and

(4) Directional signs located adjacent to the Primary System shall be within 50 air miles of the activity.

(5) No directional signs shall be located within 500 feet of an off-premise outdoor advertising sign on any state highway.

e. Message content. The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers, or exit number. Descriptive words or phrases, and pictorial or photographic representations of the activity or its environs are prohibited.

f. Selection methods and criteria for privately owned activities or attractions to obtain directional sign approval.

i. Privately owned activities are attractions eligible for directional signing are limited to the following categories:

(1) Natural phenomena,
(2) Scenic attractions,
(3) Historic sites,
(4) Educational sites,
(5) Cultural sites,
(6) Scientific sites,
(7) Religious sites, and
(8) Outdoor recreational areas.

ii. To be eligible, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public.

iii. The Director, Arizona Department of Transportation, will appoint a Selection Board for Directional Signing Qualifications consisting of three administrative or professional employees of the Department of Transportation, one of whom shall be designated as chairperson, to judge and approve the qualifications for directional signing of privately owned activities or attractions as limited to the categories in subsection (D)(3)(f)(i) and the qualification in subsection (D)(3)(f)(ii).

iv. Applicants for directional signs involving privately owned activities or attractions, shall first qualify the activity or attraction by submitting an official qualification form to the attention of the maintenance permit engineer, highways division, Arizona Department of Transportation. The maintenance permit engineer will forward the application for qualification, along with any technical data which may assist the selection board in making the selection board's determination, to the selection board.

v. Applicant shall indicate one or more categories (as listed in subsection (D)(3)(f)(i) that is applicable to the activity or attraction for which qualification is sought. Applicants shall submit a statement and supporting evidence that the activity or attraction is nationally or regionally known and is of outstanding interest to the traveling public.

vi. The selection board will, upon approval or rejection of an application, give notification of the selection board's determination in writing, to the applicant and to the maintenance permit engineer.

vii. The maintenance permit engineer will not issue any permits for directional signs for any privately owned activity or attraction until receipt of qualification approval by the selection board. All directional sign permits issued for the Department of Transportation by the maintenance permit engineer will meet the standards for directional and other official signs as incorporated in the "Rules and Regulations for Outdoor Advertising along Arizona Highways" approved and issued by the Director, Arizona Department of Transportation.

g. Rural activity signs are intended to give directions to rural activity sites located along rural roads connecting to state highways. The signs must be located in areas primarily rural in nature. Rural activities that may qualify include ranches, recreational areas and mines. Signs for private residences, subdivisions, and commercial activities are not permitted. Industrial activities that are located in primarily rural areas such as mines or material pits may be allowed. The signs shall not be located in business areas, unzoned commercial or industrial areas, or within municipal limits. The selection board may make final determination of eligibility for those signs when necessary. Not more than one sign pertaining to a rural activity facing the same direction of travel may be erected along a single route approaching the rural connecting road. Signs will be limited to 10

square feet in area. All other standards for directional signs shall apply.

h. No application fee is required for official signs and notices, public utility signs, service club and religious notices, public service signs or directional signs erected by federal, state or local governments. Other directional signs require a permit application and $20.00 fee.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R17-3-711 renumbered without change as Section R17-3-701 (Supp. 88-4). Amended by final rulemaking at 18 A.A.R. 2347, effective November 10, 2012 (Supp. 12-3).

Exhibit 1. Expired

Historical Note

Exhibit 1 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 2. Expired

Historical Note

Exhibit 2 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 3. Expired

Historical Note

Exhibit 3 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 4. Expired

Historical Note

Exhibit 4 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 5. Expired

Historical Note

Exhibit 5 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 6. Expired

Historical Note

Exhibit 6 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 7. Expired

Historical Note

Exhibit 7 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 8. Expired

Historical Note

Exhibit 8 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

Exhibit 9. Expired

Historical Note

Exhibit 9 expired under A.R.S. § 41-1056(E) at 15 A.A.R. 2104, effective October 1, 2009 (Supp. 09-4).

R17-3-701.01. Outdoor Advertising Control: Restrictions on the Erection of Billboards and Signs and Restrictions on the Issuance of Permits

A. Outdoor advertising shall not be erected under A.R.S. § 28-2102(A)(4) or (5) in a zoned area:

1. Which is not part of a comprehensive zoning plan and which is created primarily to permit outdoor advertising structures, or
2. In which limited commercial or industrial activities are permitted as an incident to other primary land uses.

B. A permit for outdoor advertising shall not be issued under A.R.S. § 28-2106(4) in a zoned area:

1. Which is not part of a comprehensive zoning plan and which is created primarily to permit outdoor advertising structures, or
2. In which limited commercial or industrial activities are permitted as an incident to other primary land uses.

Historical Note

Emergency rule adopted effective May 17, 1994, pursuant to A.R.S. § 41-1026, valid for 90 days (Supp. 94-2). Permanently adopted without change effective August 12, 1994 (Supp. 94-3).

R17-3-702. Repealed

Historical Note

Adopted effective September 9, 1977 (Supp. 77-5). Amended effective May 11, 1981 (Supp. 81-3). Former Section R17-3-712 renumbered without change as Section R17-3-702 (Supp. 88-4). Section R17-3-702 and Exhibits 1-9 repealed by final rulemaking at 10 A.A.R. 5202, effective February 5, 2005 (Supp. 04-4).

R17-3-703. Arizona Junkyard Control

A. Purpose. The purpose of this Section is to describe the Arizona Department of Transportation's responsibility to effectively control junkyards within 1000 feet of the right-of-way on interstate highways under A.R.S. §§ 28-7941 through 28-7946.

B. Definitions. For purposes of this Section:

1. "Department" means the Arizona Department of Transportation.
2. "Director" means the Director, Arizona Department of Transportation or the Director's designated representative.
3. "Screening" means the use of vegetative planting, fencing, masonry wall or other constructed structure, earthen embankment, or a combination of any of these that effectively hides from view a deposit of junk from the main-traveled way.
4 "Screening license" means a license issued by the Director as required by A.R.S. § 28-7943 and as described in this Section.
5. "Unzoned industrial area" means the same as in A.R.S. § 28-7901(11).

C. Screening license application procedure.

1. Screening license required. The Department requires a screening license for a junkyard that:
   a. Was established or expanded after July 1, 1974;
   b. Is located within 1000 feet of the nearest edge of the right-of-way of the interstate highway system;
   c. Is within view of the main-traveled way of the interstate highway system; and
   d. Is not located in a zoned or unzoned industrial area.

2. Screening license form. An applicant shall use the Department "junkyard permit application" form to apply for a screening license, and provide the following information:
   a. Name, address, and telephone number of the owner;
   b. Legal description of the land where the junkyard to be screened is located;
   c. Name and address of the junkyard business;
   d. Location of the junkyard, including:
      i. The highway route number,
      ii. Distance, in feet, to nearest highway milepost,
      iii. Distance, in feet, from the highway right-of-way to the junkyard boundaries.
   e. Zoning classification of the land where the junkyard is located; and,
   f. Type, size, and date of establishment of the junkyard.
3. Application mailed to Permits Manager. An applicant shall mail the completed junkyard permit application, required documentation and the $25.00 fee, in the form of a check or money order payable to the Arizona Department of Transportation, to:
   Arizona Department of Transportation
   Intermodal Transportation Division
   206 South 17th Avenue, MD 004R
   Phoenix, AZ 85007
   Attention: Maintenance Permits Manager, Maintenance Section
4. Required documentation. Along with the junkyard permit application, an applicant shall submit the following documentation:
   a. A location diagram or plat of the junkyard area that indicates:
      i. The highway route number;
      ii. Distance, in feet, to nearest highway milepost;
      iii. Physical features such as buildings, bridges, culverts, utility poles, and other stationary improvements or site features that adequately describe the location; and
      iv. Distance, in feet, from the highway right-of-way to the junkyard boundaries.
   b. A drawing or plan, drawn to scale, of the junkyard screening design to be used, that includes:
      i. Plan view;
      ii. Elevation;
      iii. Construction details of fencing, berms, and plantings used alone or in combination;
      iv. If applicable, plant pit size, backfill material to be used, planting and staking details, botanical names of plant materials, plant size at the time of planting, and the spacing between plants; and
      v. Any details necessary to show design and construction materials to be used.
5. Extensions. A request for an extension shall be in writing. The Department shall grant a 60 day extension in the following circumstances:
   a. If an applicant requests an extension for completion of screening within 90 days after the Department approves a screening license; and
   b. If the Department gives a junkyard owner a violation notice and the junkyard owner requests an extension to submit the screening application within 60 days of receiving the violation notice.
6. License issuance or denial.
   a. The Department shall grant an application for a screening license only if the application complies with all requirements of A.R.S. §§ 28-7941 through 28-7946 and this Section.
      i. A junkyard owner has 180 days from the date of approval to screen the junkyard.
      ii. The Department shall field check each approved license to ensure compliance with the screening requirements of A.R.S. §§ 28-7941 through 28-7946, and this Section.
   b. If the Department denies an application because the screening plan does not comply with A.R.S. §§ 28-7942 through 28-7946 or this Section, an applicant may, within 10 days of the denial, request permission in writing to submit an amended application and amended screening plan without paying an additional fee.
   c. A junkyard owner who fails to complete the junkyard screening within 180 days from approval of the screening license, or other prescribed period, may be found guilty under subsection (D)(9).
7. Invalidation of screening license. An existing screening license shall become invalid at a previously approved location when the junkyard is enlarged or substantially changed in use so that the screening no longer adequately screens the junk. An owner shall apply for a new and separate screening license.
8. Transfer of screening license. To transfer a screening license upon sale of a junkyard, a new owner shall submit to the Department written notification of sale within 30 days after date of sale. Upon sale of a junkyard, the new owner shall continue all screening maintenance.

D. Screening.
1. Purpose. This subsection describes the requirements governing the location, planting, construction, and maintenance, of materials used in screening junkyards as required in A.R.S. § 28-7942(D).
2. Junkyard expansions. A junkyard owner shall be responsible for any expense to expand an existing junkyard screen. Screening expansions shall be aesthetically compatible, as the Director determines, with existing screens.
3. Screening location. Fences and screens shall be located so as not to be hazardous to the traveling public. New junkyards and expansions shall have screens in place before any junk is deposited.
4. Acceptable screening. When fencing is used alone or in combination with plant material, the fencing shall be capable of screening the junk entirely from view. When planting is used alone or in combination with an earthen berm, the number, type, size, and spacing of the plants shall be capable of screening the junk entirely from view, as determined by the Department.
5. Acceptable fencing materials. Acceptable fencing includes: steel or other metals; durable woods such as heart cypress, redwood, or other wood treated with a preservative; and walls of concrete block, brick, stone, or other masonry. Metal fencing shall be stained, colored, coated, or painted to blend into surroundings and be aesthetically unobtrusive.
6. Acceptable plant materials. Plant materials used shall be predominantly evergreen. In general, the minimum size of plant materials used shall be equal to five-gallon con-

tainers. An applicant may obtain a list of acceptable plant materials from the Department.

7. Screening maintenance. A junkyard owner shall ensure that screening does not enter the right-of-way. A junkyard owner shall maintain all screening in good condition by:
   a. Maintaining fences, walls, or other structural material in good appearance by timely painting and repair.
   b. Adequately watering, cultivating, mulching, or giving other maintenance to plant material, including spraying for insect control, to keep the planting in healthy condition; and
   c. Removing all dead plant material immediately and replacing it promptly during the following planting season. Replacement plants shall be at least as large as the initial planting as approved on the screening license.
8. Abandoned, destroyed, or voluntarily discontinued junkyards. A junkyard that ceases to operate for a period of one year or longer, shall comply with A.R.S. § 28-7943 and obtain a screening license to be reopened.
9. Violation.
   a. The Department shall issue a violation notice to a junkyard owner for failing to comply with A.R.S. §§ 28-7941 through 28-7946. A junkyard owner shall have 60 days from the date the violation notice is issued to apply for a screening license and submit a screening plan for the Department's review and approval.
   b. A person who violates any provision of A.R.S. §§ 28-7941 through 28-7946 or this Section for junkyard control can be found guilty of a misdemeanor under A.R.S. § 28-7946.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Amended effective June 13, 1980 (Supp. 80-3). Former Section R17-3-713 renumbered without change as Section R17-3-703 (Supp. 88-4). Amended by final rulemaking at 8 A.A.R. 844, effective February 8, 2002 (Supp. 02-1).

ARTICLE 8. EXPIRED

R17-3-801. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-1).

R17-3-802. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-1).

R17-3-803. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-1).

R17-3-804. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-1).

R17-3-805. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Correction to subsection (C) (Supp. 88-4). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-1).

R17-3-806. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-w1).

R17-3-807. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Amended by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 1589, effective February 4, 2020 (Supp. 20-3).

R17-3-808. Expired

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 4, 2020 (Supp. 20-1).

R17-3-809. Repealed

Historical Note

Adopted effective May 30, 1984 (Supp. 84-3). Amended effective August 3, 1994 (Supp. 94-3). Section repealed by final rulemaking at 10 A.A.R. 2073, effective July 6, 2004 (Supp. 04-2).

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

R17-3-901. Signing for Colleges and Universities

A. Definitions.

"Community College" has the meaning as prescribed in A.R.S. § 15-1401.

"Department" means the Arizona Department of Transportation.

"FHWA" means the Federal Highway Administration of the U.S. DOT.

"Major metro area" means an urban area with a population of at least 50,000.

"Municipality" means an incorporated city or town.

"MUTCD" means the Manual on Uniform Traffic Control Devices, a national standard for the design and application of traffic control devices that is published by the U.S. DOT/FHWA and that is the standard for traffic control devices on the streets and highways of this state as required by A.R.S. § 28-641.

"Nonconforming sign" means an erected sign that does not comply with this Section or A.R.S. § 28-642(D) due to changes in the statutes, rules, or changed conditions. Examples of changed conditions include the reconstruction of a highway or physical deterioration of a sign.

"Regionally accredited college or university" means a college or university accredited by a regional institutional accrediting association recognized by the Arizona State Board for Private Postsecondary Education.

"Rural area" means all areas other than a major metro area or an urban area.

"Signing" means standard highway supplemental guide signs as specified in the MUTCD.

"State highway" has the same meaning as prescribed in A.R.S. § 28-101.

"State University" means a university established and maintained by the Arizona Board of Regents under A.R.S. § 15-1601.

"Trailblazing sign" means a sign installed by a local governmental agency, off the state highway, to guide traffic to a college or university.

"Trip" means a one-way commute to or from a college or university, calculated by the Department based on the number of students or dorm beds, using the following equivalents:

One student = 1 1/2 trips
One dorm bed = three trips.

"Urban area" means a municipality having a population of at least 10,000 but less than 50,000.

"U.S. DOT" means the United States Department of Transportation.

B. Application for signing. A college or university referenced in A.R.S. § 28-642(D) may request signing by submitting a letter on its letterhead to the Department's State Traffic Engineer. The letter shall contain the following information:

1. Name of college or university;
2. Complete street address;
3. Names of agencies granting accreditation;
4. Number of students;
5. Number of dormitory beds, if applicable; and
6. Signature of a person authorized to sign for the college or university.

C. Requirements. To be considered for signing, a college or university referenced in A.R.S. § 28-642(D) shall satisfy the following:

1. Is on a road that intersects a state highway. If a college or university is on a road that does not intersect a state highway, it still may qualify if:
   a. The governing political subdivision submits to the Department, within 30 days from the Department's receipt of the request for signing, written confirmation stating that the governing political subdivision will install and maintain trailblazing signs; and
   b. The governing political subdivision installs trailblazing signs before the Department places signing on the state highway.
2. Meets all the requirements under subsection (C)(2)(a), (b), or (c) of this Section.
   a. If in a major metro area:
      i. Generates at least 4000 trips per weekday.
      ii. Is three miles or less from a state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of five miles.
   b. If in an urban area:
      i. Generates at least 2000 trips per weekday.
      ii. Is four miles or less from a state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of five miles.
   c. If in a rural area:
      i. Generates at least 1000 trips per weekday.
      ii. Is five miles or less from the state highway, except the distance may be increased 1/4 mile for each 10% increase in the required number of trips per weekday to a maximum of 15 miles.

D. Exceptions to standards. The Department may place supplemental guide signs on state highways to direct traffic to colleges and universities. The Department shall determine whether to place supplemental guide signs for a college or university based on the specific criteria and the guidelines in the MUTCD.

E. Nonconforming signs. The Department may remove a nonconforming sign if:

1. Other signs have greater priority under the criteria in the MUTCD,
2. Physical spacing of signs is limited for an upcoming interchange or intersection, or
3. A greater number of trips are generated by the subject of other guide signs.

F. College or university. Only the initial, main campus of a college or university referenced in A.R.S. § 28-642(D) may qualify for signing, unless otherwise permitted by statute.

Historical Note
Adopted effective May 7, 1991 (Supp. 91-2). Amended by final rulemaking at 8 A.A.R. 3838, effective August 12, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-902. Logo Sign Programs

A. Definitions.

"Attraction" means any of the following:

"Arena" means a facility that has a capacity of at least 5000 seats, and is a:

Stadium or auditorium;

Track for automobile, boat, or animal racing; or

Fairground that has a tract of land where fairs or exhibitions are held and permanent buildings that include bandstands, exhibition halls, and livestock exhibition pens.

"Cultural" means an organized and permanent facility that is open to all ages of the public, and is a:

Facility for the performing arts, exhibits, or concerts; or

Museum with professional staff, and an artistic, historical, or educational purpose, that owns or uses tangible objects, cares for them, and exhibits them to the public.

"Domestic farm winery" means a site licensed by the Arizona Department of Liquor Licenses and Control under A.R.S. § 4-205.04 that produces at least 200 gallons and not more than 40,000 gallons of wine annually that is commercially packaged for off-premises sale, and is open to the public for tours to provide an educational format for informing visitors about wine.

"Domestic microbrewery" means a site licensed by the Arizona Department of Liquor Licenses and Control under A.R.S. § 4-205.08 that produces not less than 5000 gallons of beer in each calendar year following the first year of operation and not more than 1.24 million gallons of beer in a calendar year, and is open to the public for tours to provide an educational format for informing visitors about beer.

"Dude ranch" means a facility offering overnight lodging, meals, horseback riding, and activities related to cattle ranching;

"Farm-related" means an established area or facility where consumers can purchase directly from Arizona producers locally-grown, consumer-picked or pre-picked produce, or local products produced from locally-grown produce.

"Golf course" means a facility offering at least 18 holes of play. Golf course excludes a miniature golf course, driving range, chip-and-putt course, and indoor golf.

"Historic" means a structure, district, or site that is listed on the National or Arizona Register of Historic Places as being of historical significance, and includes an informational device to educate the public about the facility's historic features.

"Mall" means a shopping area with at least 1 million square feet of retail shopping space.

"Recreational" means a facility for physical exercise or enjoyment of nature that includes at least one of the following activities: walking, hiking, skiing, boating, swimming, picnicking, camping, fishing, playing tennis, horseback riding, skating, hang-gliding, and climbing;

"Scenic tours" means a business that offers guided tours of scenic areas in Arizona through various means, including air, motorized vehicle, animal, walking, or biking;

"Average annual daily traffic" means the total volume of traffic passing a point or segment of an interstate or other state highway in both directions for one year, divided by the number of days in the year, adjusted for hours of the day counted, days of the week, and seasons of the year.

"Business" means an entity that provides a specific service open for the general public and is located on a roadway within the required distance of an interstate or other state highway.

"Contract" means a written agreement between a contractor and the Department to operate a logo sign program or any aspect of a logo sign program that describes the obligations and rights of both parties.

"Contractor" means a person or entity that enters into an agreement with the Department to operate a logo sign program or any aspect of a logo sign program, and that is responsible for those aspects of a logo sign program as provided in the contract.

"Department" means the Arizona Department of Transportation.

"Exit ramp" means a roadway by which traffic may leave a controlled access highway.

"FHWA" means the Federal Highway Administration of the U.S. DOT.

"Food court" means a collective food facility that exists in one contiguous area and contains a minimum of three separate food service businesses.

"Highway" has the same meaning as prescribed in A.R.S. § 28-101.

"Interchange" means the point at which traffic on a system of interconnecting roadways that have one or more grade separations, moves from one roadway to another at a different level.

"Intersection" has the same meaning as prescribed in A.R.S. § 28-601.

"Interstate system" has the same meaning as prescribed in A.R.S. § 28-7901.

"Lease agreement" means a written contract between a contractor and a responsible operator, or between the Department and a responsible operator, to lease space for a responsible operator's logo on a contractor's or the Department's specific service information sign.

"Logo" means an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

"Logo sign" means a specific service information sign consisting of a lettered board attached to a separate rectangular panel that displays an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

"Logo sign panel" means a separate rectangular panel on which a logo is placed.

"Municipality" means an incorporated city or town.

"MUTCD" means the Manual on Uniform Traffic Control Devices, a national standard for the design and application of traffic control devices that is published by the U.S. DOT/FHWA and that is the standard for traffic control devices on the streets and highways of this state as required by A.R.S. § 28-641.

"Primary business" means:

A gas service business that is within three miles of an intersection or exit ramp; is in continuous operation to provide services at least 16 hours per day, seven days per

week for the interstate system; and 12 hours per day, seven days per week, for other highways;

A food service business that is within three miles of an intersection or exit ramp terminal and is in continuous operation to serve at least two meals per day at least six days per week;

A lodging service business that is within three miles of an intersection or exit ramp terminal;

A camping service business that is within five miles of an intersection or exit ramp terminal;

An attraction service business, or staging area of that business, that is within three miles of an intersection or exit ramp terminal; or

A 24-hour pharmacy that is within three miles in any direction of an interchange or exit ramp terminal on the interstate system.

"Ramp terminal" means the area where an exit ramp intersects with a roadway.

"Responsible operator" means a person or entity that:

Owns or operates an eligible business, pursuant to subsection (C) of this Section,

Has authority to enter into a lease,

Enters into a lease for a logo sign through the rural or urban logo sign program, and

Has not become ineligible to participate.

"Rural logo sign program" means a system to install and maintain specific service information signs on a rural state highway outside of an urbanized area, as provided in A.R.S. § 28-7311(E)(2).

"Rural state highway" means any class of state highway, located outside of an urbanized area as provided in A.R.S. § 28-7311 (E)(2).

"Secondary business" means a business as follows:

A gas service business that is within three to 15 miles of an intersection or exit ramp terminal, and is in continuous operation to provide services at least eight hours per day, five consecutive days per week;

A food service business that is within three to 15 miles of an intersection or exit ramp terminal, and is in continuous operation to serve at least two meals per day (either breakfast and lunch, or lunch and dinner) for a minimum of five consecutive days per week;

A lodging service business that is within three to 15 miles of an intersection or exit ramp terminal;

A camping service business that is within five to 15 miles of an intersection or exit ramp terminal; or

An attraction service business, or staging area of that business, that is within three to 15 miles of an intersection or exit ramp terminal.

"Specific service" means gas, food, lodging, camping, attractions, or 24-hour pharmacies.

"Specific service information sign" means a rectangular sign panel that contains directional information, one or more logos, and the following words:

"GAS," "FOOD," "LODGING," "CAMPING," "ATTRACTION," OR "24-HOUR PHARMACY."

"Staging area" means a regular, designated site where a scenic tour begins.

"State highway" has the same meaning as prescribed in A.R.S. § 28-101.

"Trailblazing sign" means a specific service information sign that provides additional directional guidance to a location, route, or building from another highway or roadway.

"Urbanized area" has the same meaning as prescribed in A.R.S. § 28-7311(E)(2).

"Urban logo sign program" means a system to install and maintain specific service information signs on an interstate system or other state highway within an urbanized area, as provided in A.R.S. § 28-7311.

"U.S. DOT" means the United States Department of Transportation.

B. Administration.

1. The Department may operate an urban and a rural logo sign program, or may select a contractor to administer an urban and a rural logo sign program. An urban logo sign program may be implemented on state highways in any urbanized areas in the state. A rural logo sign program may be implemented on state highways located outside of urbanized areas in the state. If the Department utilizes a contractor to administer an urban and a rural logo sign program, the Department shall solicit offers, as provided in A.R.S. §§ 41-2501 through 41-2673, to select a contractor.
2. The Department may contract separately for an urban and a rural logo sign program.
3. A contract shall specify the standards that a contractor shall use, which are contained in the MUTCD, U.S. DOT/FHWA current edition as adopted by the Department under A.R.S. § 28-641 and any other requirements and standards prescribed by the Department.
4. The Department may propose its own form of a written lease agreement with a responsible operator. The Department shall prescribe the form of any written lease agreement between a contractor and a responsible operator. A contractor's lease agreement with a responsible operator shall include, by reference, the terms and conditions of the Department's contract with a contractor under A.R.S. §§ 41-2501 through 41-2673. A contractor or the Department may terminate program participation of any responsible operator under subsection (C)(1) of this Section.

C. Eligibility criteria for primary and secondary businesses.

1. Any business is ineligible to place a logo on a logo sign panel on a particular state highway if it already has a highway guide sign installed on that state highway by a contractor or the Department. Any business is ineligible for program participation if:
   a. Thirty calendar days have elapsed since a contractor or the Department issued a notice of default to a business, during which time a business failed to cure the default, or
   b. A business has defaulted on a lease.
2. Gas service business. To be eligible to place a logo on a logo sign panel, a gas service business shall:
   a. Provide gasoline, diesel fuel, oil, and water for public purchase or use;

b. Provide sanitary restroom facilities and drinking water;
c. Provide a telephone available for public use; and
d. Meet the additional requirements for a primary or secondary gas service business in the definition of a primary or secondary business in subsection (A) of this Section.

3. Food service business. To be eligible to place a logo on a logo sign panel, a food service business shall:
   a. Provide sanitary restroom facilities for customers;
   b. Provide a telephone available for public use;
   c. If a food service business is part of a food court located within a shopping mall, the shopping mall may qualify as the responsible operator if the food court:
      i. Complies with this Section, and
      ii. Has clearly identifiable, on-premise signing consistent with the logo sign that is sufficient to guide motorists directly to the entrance to the food court.
   d. Have a license where required; and
   e. Meet the additional requirements for a primary or secondary food service business in the definition of a primary or secondary business in subsection (A) of this Section.
4. Lodging service business. To be eligible to place a logo on a logo sign panel, a lodging service business shall:
   a. Provide five or more units of sleeping accommodations;
   b. Provide a telephone available for public use;
   c. Have a license, where required;
   d. Provide sanitary restroom facilities for customers; and
   e. Meet the additional requirements for a primary or secondary lodging service business in the definition of a primary or secondary business in subsection (A) of this Section.
5. Camping service business. To be eligible to place a logo on a logo sign panel, a camping service business shall:
   a. Be able to accommodate all common types of travel trailers and recreational vehicles;
   b. Have a license, where required;
   c. Provide sanitary restroom facilities and drinking water;
   d. Be available on a year-round basis unless camping in the community is of a seasonal nature in which case, the facilities in question shall be open to the public 24 hours per day, seven days per week during the entire season; and
   e. Meet the additional requirements for a primary or secondary camping service business in the definition of a primary or secondary business in subsection (A) of this Section.
6. Attraction service business. To be eligible to place a logo on a logo sign panel, an attraction service business shall meet the following requirements, if applicable:
   a. Derive less than 50% of its sales from:
      i. The sale of alcohol consumed on the premises, or
      ii. Gambling.
   b. Derive more than 50% of its sales or visitors during the normal business season from motorists who do not reside within a 25-mile radius of the business.
   c. Provide at least 10 parking spaces.
   d. Provide historical, cultural, amusement, or leisure activities to the public.
   e. Be in continuous operation at least six hours per day, six days per week, except:
      i. An arena attraction shall hold events at least 28 days annually;
      ii. A cultural attraction shall be open at least 180 days annually;
      iii. A domestic farm winery or domestic microbrewery shall be open for tours at least 40 days annually;
      iv. A farm-related attraction shall be open at least 120 days annually; or
      v. A dude ranch shall be open at least 150 days annually.
   f. Meet the additional requirements for a primary or secondary attraction service business in the definition of a primary or secondary business in subsection (A) of this Section.
7. Twenty-four hour pharmacy business. To be eligible to place a logo on a logo sign panel, a 24-hour pharmacy business shall:
   a. Operate continuously 24 hours per day, seven days per week;
   b. Have a state-licensed pharmacist present and on duty at all times; and
   c. Meet the additional requirements for a primary 24-four hour pharmacy business in the definition of a primary business in subsection (A) of this Section.

D. Responsible operator pricing and lease procedures.
1. In the rural and urban logo sign programs, a contractor or the Department may use:
   a. Rate schedules that are established and periodically adjusted by the Department; or
   b. Competitive pricing established by one or more offers from potential or current responsible operators.
2. A contractor or the Department may use competitive pricing or rate schedules to determine the ranking order of potential or current responsible operators who may be awarded a logo sign lease at each appropriate highway interchange or location.
3. Along with the amount of available signage, competitive pricing or rate schedules may be based on any one or a combination of the following additional factors:
   a. The average, annual, daily traffic at, or adjacent to, the highway location of the specific service information sign;
   b. The population mix and relative distribution between primary and secondary businesses that appear to meet all the program requirements;
   c. The ranking order determined by a contractor or the Department as established by competitive pricing proposed or offered by potential or current responsible operators, or rate schedules, at each appropriate highway interchange or location; or
   d. The competitive market conditions, as well as economic, regulatory, logistical, and other related factors as determined by the Department.
4. If any of the factors in subsection (D)(3) of this Section are used in competitive pricing or rate schedules, a contractor or the Department shall make information relevant to these factors available to businesses on the contractor's or the Department's website.

5. If the factors in subsection (D)(3) of this Section do not resolve the business rankings at a location, a contractor or the Department shall prioritize the remaining requests for placement of a logo on a specific service information sign panel based on the following additional factors in the order listed below:
   a. The responsible operator situated closest to the highway intersection or exit ramp terminal;
   b. A gas service business or a food service business that provides the most days and hours of service to the public; and
   c. The first-in-time, eligible responsible operator to request placement of a logo on a logo sign panel.
6. If a potential responsible operator requests placement of a logo on a specific service information sign panel at a highway intersection or interchange where there are no available placements, and does so no later than 90 calendar days before the first expiration of an existing lease with a lower-ranked responsible operator at that location, a contractor or the Department may award a lease to the highest-ranked responsible operator at that location. A contractor or the Department may establish a waiting list of requesting businesses and potential responsible operators.
7. A contractor or the Department may choose not to renew an existing lease or a lease expiring within the next 90 calendar days, if another eligible business with higher priority requests placement of a logo on a specific service information sign panel at the same location.

E. Secondary businesses.

1. Lease limitations. For a secondary business, a contractor or the Department may enter into a lease for up to five years or renew a lease for up to five years, with the following terms:
   a. A contractor or the Department shall review the lease of a responsible operator at the beginning of the 24th month of the lease term to determine if the responsible operator complies with all other terms of the lease;
   b. After the 24-month review, a contractor or the Department may terminate the lease and remove the appropriate logo from the logo sign panel if another eligible business with higher priority requests lease space for a logo on a logo sign panel; and
   c. A contractor or the Department shall notify a responsible operator at least 90 calendar days before terminating the lease and removing a logo from the logo sign panel.
2. A contractor or the Department may display the following additional information on a specific service information sign for a secondary business, as space allows, based on the following ranking order:
   a. Distance,
   b. Days and hours of operation, and
   c. Seasonal operation.

F. Contractor or Department responsibility.

1. A contractor shall follow all Department design standards and specifications for all sign panels, supports, and materials, as provided in the contract and the MUTCD.
2. A contractor or the Department shall ensure that a business complies with all criteria established in this Section. A contractor or the Department may choose not to enter into a lease agreement or renew a lease agreement if the eligibility criteria in subsection (C) of this Section are not met. If a responsible operator becomes ineligible to place a logo on a logo sign panel, a contractor or the Department shall remove a logo from a logo sign panel after notifying a responsible operator as provided in the lease.
3. A contractor or the Department shall require that a responsible operator certify in writing as directed that a responsible operator will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and contractual requirements of the rural or urban logo sign program.
4. Nothing in these rules shall require a contractor or the Department to place or maintain a specific service information sign at any particular interchange or intersection. A contractor or the Department shall not place a specific service information sign that obstructs or interferes with a traffic control device.
5. A contractor shall not remove or relocate an existing official traffic control device, as defined in A.R.S. § 28-601, to accommodate a specific service information sign without prior written approval by the Department, or a local authority under A.R.S. § 28-643.
6. A contractor or the Department shall provide a copy of the signed lease agreement to a responsible operator. A responsible operator shall deliver a logo for the logo sign panel to a contractor or the Department for installation, or contract with a contractor to fabricate a logo for a logo sign panel to a responsible operator's, and the Department's, specifications.
7. Within 30 calendar days after receipt of a written request from a responsible operator, a contractor or the Department shall return any pre-paid lease payments to a responsible operator if a responsible operator's logo is not installed on a logo sign panel within 90 calendar days of tendering the payments, for reasons solely caused by the Department or a contractor.
8. A contractor shall obtain an encroachment permit under R17-3-501 through R17-3-509 before erecting or modifying a specific service information sign along a state highway.
9. If a contractor requests an encroachment permit under R17-3-501 through R17-3-509, the Department's staff shall decide the best placement of a specific service information sign and shall cooperate with a contractor to provide information to the motoring public as prescribed in subsection (E)(2) of this Section.
10. If an urban or rural logo sign program is terminated, a contractor or the Department shall:
    a. Notify a responsible operator by certified mail, or a mutually agreed upon electronic communication method, of the program termination and the location where a responsible operator may claim its logo;
    b. Remove all sign panels and supports, as directed by the Department; and
    c. Refund any unused lease payments on a prorated basis to each responsible operator.
11. A contractor or the Department shall solely determine the position and location of new or additional logos on logo sign panels or specific service information signs when logo sign vacancies occur on a logo sign panel or a specific service information sign panel, and a new responsible operator wishes to lease space on that panel, or a waiting list exists.
12. In a lease agreement with a responsible operator, a contractor or the Department may collect all applicable taxes.

G. Urbanized or rural boundary changes. If the boundaries of an urbanized area, as identified in a subsequent decennial census, are relocated or adjusted, a contractor or the Department shall allow:
1. The logo signs within the urbanized area boundaries and outside of those boundaries to remain in place until the minimum lease obligations between a contractor or the Department and a responsible operator have been fulfilled; or
2. Until lease termination, whichever occurs first.

H. Signage transition. Logo signage in place at the end of a lease term following boundary changes in subsection (G) of this Section may be transitioned from the urban to the rural logo sign program or from the rural to the urban logo sign program as appropriate.

I. Elimination of exit ramp or interchange. When the Department eliminates an exit ramp or interchange from the state highway system, a contractor or the Department may install and maintain a specific service information sign at an exit ramp or interchange directly preceding the exit ramp or interchange that the Department eliminates in each direction, as follows:
1. On request of a responsible operator, the Department may relocate a logo sign panel or a specific service information sign, as deemed appropriate by the Department.
2. A business affected by exit ramp or interchange elimination shall meet all eligibility criteria for continued program participation as prescribed in Subsection C of this Section and the following:
   a. Be located directly off the interstate or other state highway, and
   b. Had previous routine access from the eliminated exit ramp or interchange with direct access from:
      i. The crossroad at the eliminated exit ramp or interchange;
      ii. The frontage road of the interstate or other state highway at the eliminated exit ramp or interchange, within 1000 feet of the crossroad; or
      iii. The frontage road of the interstate or other state highway at the eliminated exit ramp or interchange, within 1000 feet of the crossroad, as the frontage road existed before the exit ramp or interchange was eliminated.

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Former Section R17-3-911 renumbered without change as Section R17-3-909 (Supp. 88-4). Former Sections R17-3-902 through R17-3-909 renumbered without change as Section R17-3-902 (Supp. 89-1). Amended effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5047, effective November 4, 2003 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 3856, effective September 15, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-903. Repealed

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Repealed by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-904. MUTCD Requirements for Logo Signs

A. Number of sign panels and services allowed. No more than four specific service information sign panels are allowed on an interstate or other state highway at the approach to an intersection, interchange, or exit ramp.
1. Each specific service information sign panel shall contain a maximum of six logos as provided in Chapter 2J of the current version of the MUTCD.
2. No more than two specific service information sign panels for each type of specific service are allowed on an interstate or other state highway at the approach to an intersection, interchange, or exit ramp. A contractor or the Department may combine types of specific services as prescribed in subsection (A)(3) of this Section.
3. Except for existing logo signs displayed or approved for display as of July 6, 2012, no more than three types of services shall be represented on any specific service information sign panel. If three types of services are displayed on one specific service information sign panel, the panel shall have two logo sign panels for each service, or a total of six logo sign panels. If two types of services are displayed on one sign, the logo sign panels shall be limited to either three for each type, for a total of six logo sign panels, or four for one type and two for the other type, for a total of six logo sign panels.
4. One service type shall appear on no more than two specific service information sign panels.
5. When logos for more than six businesses of a specific service type are displayed at the same interchange or intersection approach, no more than 12 logos of a specific service type shall be displayed on no more than two specific service information sign panels.

B. Sign sequence. A contractor or the Department shall install successive specific service information signs for participating responsible operators in the direction of travel for the following as specified in the MUTCD:
1. Twenty-four hour pharmacies,
2. Attractions,
3. Camping,
4. Lodging,
5. Food, and
6. Gas services.

C. Seasonal requirements. If a responsible operator operates on a seasonal basis, a contractor or the Department shall:
1. Remove or cover a logo on a logo sign panel during the off-season; or
2. Display the dates of operation, if additional information is not required on the sign under R17-3-902(E)(2).

D. Sign standards. If the Department decides to move a specific service information sign because of construction or reconstruction of transportation facilities, or the placement of other signs or traffic control devices, the standards of the MUTCD apply regarding the new placement.

E. Trailblazing signs.
1. A contractor or the Department shall install a trailblazing sign for a responsible operator along a highway if a responsible operator's business is not located on, and is

not visible from, an intersection with a highway as directed from the specific service information sign.
2. A contractor or the Department may locate a trailblazing sign near all intersections where the direction of the route changes or where a motorist may be uncertain which road to follow.
3. A trailblazing sign is limited to four or fewer logo sign panels.
4. A contractor or the Department shall obtain written approval from a local governing authority to install and maintain a trailblazing sign along a highway that is not under the Department's maintenance jurisdiction.
5. A contractor or the Department shall not install a logo on a specific service information sign panel until all necessary trailblazing signs have been installed.
6. A trailblazing sign shall indicate by arrow the direction to a responsible operator's business.
7. A trailblazing sign may:
   a. Duplicate the logo sign or specific service information sign, or both;
   b. Consist of two lines of text; or
   c. Include the type of specific service and distance to a responsible operator's business.

F. Sign requirements. A logo sign shall comply with A.R.S. § 28-648. Descriptive advertising words, phrases, or slogans are prohibited on a logo sign, except:
1. If a responsible operator does not have an official trademark or logo, a responsible operator may display as its logo, on a logo sign panel, the name indicated in its partnership agreement, incorporation documents, or other documentation.
2. A contractor or the Department may place supplemental wording on logo sign panels in accordance with the MUTCD.

Historical Note
Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 4132, effective September 9, 2003 (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 5047, effective November 4, 2003 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

Appendix A. Repealed

Historical Note
Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Appendix A repealed by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1).

Appendix B. Repealed

Historical Note
Adopted effective May 3, 1993 (Supp. 93-2). Appendix B repealed by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1).

R17-3-905. Rural Logo Sign Requirements

A. In addition to R17-3-902 through R17-3-904 and R17-3-906, the spacing between specific service information signs on a rural state highway shall be in accordance with the MUTCD based on engineering judgment.

B. Agreement. A community official designated by a municipality or town organized under Arizona law may sign a written agreement with a contractor or the Department to prohibit installation of logos on logo sign panels or specific service information sign panels on rural state highways within the recognized boundaries of the community.

Historical Note
Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

R17-3-906. Existing Leases

Any change to R17-3-902 through R17-3-905 does not affect a responsible operator's lease before the current lease expires.

Historical Note
Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1). New Section made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5047, effective November 4, 2003 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 1324, effective July 6, 2013 (Supp. 13-2).

Illustration A. Repealed

Historical Note
New Illustration made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Illustration repealed by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2).

Illustration B. Repealed

Historical Note
New Illustration made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Illustration repealed by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2).

Illustration C. Repealed

Historical Note
New Illustration made by final rulemaking at 9 A.A.R. 624, effective February 7, 2003 (Supp. 03-1). Illustration repealed by final rulemaking at 18 A.A.R. 1263, effective July 6, 2012 (Supp. 12-2).

R17-3-907. Repealed

Historical Note
Adopted effective March 22, 1985 (Supp. 85-2). Former Section R17-3-907 repealed and a new Section R17-3-907 adopted effective June 18, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1).

R17-3-908. Repealed

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Former Section R17-3-908 repealed and a new Section R17-3-908 adopted effective April 10, 1987 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1).

R17-3-909. Repealed

Historical Note

Adopted effective March 22, 1985 (Supp. 85-2). Amended effective April 10, 1987 (Supp. 87-2). Former Section R17-3-911 renumbered without change as Section R17-3-909 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 1021, effective February 8, 2001 (Supp. 01-1).

28-305. Powers and duties of the board; rules

The board may prescribe rules for the effective administration of its powers, duties and responsibilities, including rules relating to:

1. Priority programs.

2. Establishing, altering or vacating highways.

3. Construction contracts.

4. Revenue bonds.

5. Local government airport grants.

6. Prohibiting bid rigging.

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-6923. Bid requirements; procedure; bond

A. All items of construction or reconstruction of department facilities involving an expenditure of $189,000 or more shall be called for by advertising in a newspaper of general circulation published in this state for either:

1. Two consecutive publications if it is a weekly newspaper.

2. Two publications at least six but not more than ten days apart if it is a daily newspaper.

B. In fiscal year 2008-2009 and each fiscal year thereafter, the amount provided in subsection A of this section shall be adjusted by the annual percentage change in the GDP price deflator as defined in section 41-563.

C. The advertisement shall state specifically the character of the work to be done and where a person may obtain copies of the plans, specifications and complete information as to the proposed work.

D. The bidding information provided shall state specifically the character of the work to be performed and the kind, quantity and quality of materials or supplies to be furnished. The plans and specifications:

1. Shall be sufficiently complete, definite and explicit to allow informed, free, open and competitive bidding on a common basis.

2. May require performance on the basis of either means and methods specifications or end result specifications.

3. If end result specifications are used, shall provide an objective or standard to be achieved with the successful bidder expected to exercise the bidder's skill and ingenuity in achieving that objective or standard of performance by selecting the means and manner of performance and by assuming a corresponding responsibility for that selection.

E. If contractor insurance is required for construction or reconstruction pursuant to this section, the insurance shall be placed with an insurer authorized to transact insurance in this state pursuant to title 20, chapter 2, article 1 or a surplus lines insurer approved and identified by the director of the department of insurance and financial institutions pursuant to title 20, chapter 2, article 5.

F. A bid shall be accompanied by a certified check, cashier's check or surety bond for ten percent of the amount of the bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal pursuant to the plans and specifications.

G. The certified check, cashier's check or surety bond shall be returned to the contractors whose proposals are not accepted and to the successful contractor on the execution of a satisfactory bond and contract as provided in this article.

H. The surety bond provided pursuant to subsection F of this section shall be executed and furnished as required by title 34, chapter 2, and the conditions and provisions of the surety bid bond regarding the surety's obligations shall follow the form required under section 34-201, subsection A, paragraph 3.

I. If a bid that is satisfactory to the board is received, it shall let a contract to the lowest responsible bidder, on the contractor giving performance and payment bonds that follow the form and include the provisions required by title 34, chapter 2, article 2.

J. If the bids received for construction or reconstruction are not satisfactory to the board, a second call shall be made. If they are again rejected by the board, it may authorize the state engineer to construct or reconstruct the item as it deems most advantageous.

K. In determining the lowest responsible bidder under this section, the department and the board may consider the time of completion proposed by the bidder if the department and the board determine that this procedure will

serve the public interest by providing a substantial fiscal benefit or that the use of the traditional awarding of contracts is not practicable for meeting desired construction standards or delivery schedules and if the formula for considering the time of completion is specifically stated in the bidding information.

L. This section does not prohibit a change to a construction contract that either:

1. Does not alter the scope of the work under a contract and the cost of the change does not exceed ten percent of the contract amount or $50,000, whichever is greater.

2. Does alter the scope of the work if the cost of the change does not exceed ten percent of the contract amount or $50,000, whichever is greater, and the changed work is within twenty percent of the total project length.

M. If a project is funded completely with private monies, the private entity is not required to comply with subsections A through L of this section if the private entity complies with all of the following:

1. Before advertising for bids, submits to the department a bond that is issued by a surety insurer authorized to do business in this state and that is in an amount equal to one hundred twenty-five percent of the anticipated construction cost of the project, including construction management and contractor costs.

2. Solicits sealed bids from at least four contractors who are prequalified by the department to perform a contract of the anticipated dollar amount of the construction.

3. Awards the contract to the best bidder taking into account price and other criteria as provided in the bid documents.

4. Obtains bonds from the selected contractor that provide the same coverage as performance and payment bonds issued under title 34, chapter 2, article 2.

5. Uses department construction standards.

6. Pays all costs of department reviews of the contract and inspections of the project.

N. For the purposes of this section, a project is funded completely with private monies if all of the following apply:

1. The contractor is paid entirely with monies from private entities.

2. The private entities hire a competent construction manager and contractor who do not have an affiliation with each other.

3. The private entities either pay all costs of design or reimburse the department for all costs of design.

28-7045. Director; state highway and route use; rules

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

28-7053. Misuse of public highway or airport; violation; classification; injunction; definition

A. A person who commits or causes to be committed any of the following acts is guilty of a petty offense:

1. Places or maintains an encroachment or obstruction on, makes any use of or otherwise occupies a public highway or airport of this state or any of its political subdivisions for any purpose other than for authorized public travel, communication, transportation or transmission, except as otherwise provided in this section.

2. Places or maintains an encroachment or obstruction on, uses, occupies, damages or otherwise interferes with a public highway, airport or public bridge, causeway, viaduct, trestle or dam, unless either:

(a) Authorized by the director, if it is a state highway or structure or airport facility.

(b) Authorized by the governing body of the political subdivision in which the act is committed, if it is not a state highway or structure or airport facility.

3. Knowingly molests or destroys any part, projection, structure, appurtenance or accessory of a public highway or airport or destroys or otherwise interferes with a drainage ditch constructed for the protection of a public highway or airport or a dike, ditch, levee or jetty or an embankment appurtenant to a drainage ditch constructed for the protection of a public highway or airport.

4. Knowingly destroys or interferes with a ford, dip, culvert or crossing of a creek, gulch, river or stream by digging away the banks or by damming, deepening or widening a creek, gulch, river or stream to divert waters on the public highway or airport or to cause injury or damage to the public highway or airport by flooding or otherwise.

5. Knowingly places or maintains a vehicle, aircraft or structure parked or placed wholly or partly within a public highway, runway or taxiway specifically for the purpose of selling the vehicle, aircraft or structure or of selling or specifically advertising the sale of, at any location, an article, service or thing.

6. Knowingly stores, services, repairs or otherwise works on a vehicle wholly or partly within a highway other than on a vehicle that is temporarily disabled.

7. Knowingly removes, damages or destroys a tree or shrub standing on a highway right-of-way.

8. Knowingly obstructs or injures a public highway, runway or taxiway by causing or permitting flow or seepage of water under the person's control to escape onto the highway, runway or taxiway.

B. Each day of violation of any provision of subsection A of this section is a separate violation on failure to remove or to diligently prosecute the removal of an encroachment after notice under section 28-7054. Each encroachment shall be treated as a separate violation.

C. In addition to the penalties prescribed by this section, an act in violation of this section is a public nuisance and may be abated by an injunction. A person who commits the act is subject to an action for damages by this state brought by the attorney general or the county attorney of the county in which the act is committed on direction of the attorney general.

D. This section does not apply to:

1. Department personnel or agents performing normal construction and maintenance functions.

2. A person who has prior authorization in writing from the director to perform any of the acts referred to in this section.

E. For the purposes of this section, "encroachment" includes a structure or object of any kind or character that is placed in, under or over a portion of the public highway or airport.

28-7141. Definitions

In this article, unless the context otherwise requires:

1. "Business" means a lawful activity, except a farm operation, that is conducted primarily by or for any of the following:

(a) The purchase, sale, lease and rental of personal and real property and the manufacture, processing or marketing of products, commodities or other personal property.

(b) The sale of services to the public.

(c) By a nonprofit corporation.

(d) Solely for the purposes of section 28-7143, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

2. "Comparable replacement dwelling" means a dwelling that is all of the following:

(a) Decent, safe and sanitary.

(b) Adequate in size to accommodate the occupants.

(c) Within the financial means of the displaced person.

(d) Functionally equivalent.

(e) In an area that is not subject to unreasonably adverse environmental conditions.

(f) In a location that is generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

3. "Displaced person":

(a) Means a person who moves from real property or moves the person's personal property from real property either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of the real property in whole or in part for a program or project undertaken by a displacing agency.

(ii) On which the person is a residential or business tenant or conducts a small business, a farm operation or a business as a direct result of rehabilitation, demolition or any other displacing activity as the department may prescribe under a program or project undertaken by a displacing agency in a case in which the displacing agency determines that the displacement is permanent.

(b) Solely for the purposes of sections 28-7142 and 28-7143, means a person who moves from real property or moves the person's personal property from real property either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency.

(ii) As a direct result of rehabilitation, demolition or any other displacing activity as the department may prescribe of other real property on which the person conducts a business or a farm operation, under a program or

project undertaken by a displacing agency if the displacing agency determines that the displacement is permanent.

(c) Does not include either:

(i) A person who has been determined either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this article.

(ii) In a case in which the displacing agency acquires property for a program or project, a person, other than a person who was an occupant of the property at the time it was acquired, who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

4. "Displacing agency" means the department in carrying out a program or project with federal or state financial assistance that causes a person to be a displaced person.

5. "Family" means two or more persons who are living together in the same dwelling unit and who are related to each other by blood, marriage, adoption or legal guardianship.

6. "Farm operation" means an activity conducted primarily for the production of one or more agricultural products or commodities, including timber for sale and home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

7. "Individual" means a person who is not a member of a family.

8. "Initiation of negotiations" means the date the department first makes personal contact with the owner or the owner's personal representative of the property sought to be acquired if the price to be paid for the property is discussed.

9. "Mortgage" means the classes of liens as are commonly given to secure advances on or the unpaid purchase price of real property under the laws of the state in which the real property is located and the credit instruments, if any, secured thereby.

10. "Person" means an individual, family, partnership, corporation or association.

28-7148. Rules

A. The director shall adopt rules as the director determines is necessary to ensure that:

1. The payments and assistance authorized by this article are administered in a manner that is fair and reasonable and as uniform as practicable.

2. A displaced person who makes proper application for a payment authorized by this article is paid promptly after a move, or in hardship cases, paid in advance.

3. An aggrieved person may have the person's application reviewed.

B. The director shall adopt any other rules that are consistent with this article as the director deems necessary or appropriate to carry out this article.

28-7149. Payments not income

A payment received by a displaced person under this article:

1. Is not income for the purposes of title 43 relating to the taxation of income.

2. Is not considered as income or resources to a recipient of public assistance.

3. Shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under a federal, state, county or city welfare program.

28-7152. Assurance of dwellings

A. If a program or project undertaken by a displacing agency cannot proceed on a timely basis because comparable replacement dwellings are not available and the head of the displacing agency determines that the dwellings cannot otherwise be made available, the head of the displacing agency shall take any action that is necessary or appropriate to provide the dwellings by the use of monies authorized for the project. The displacing agency may exceed the maximum amounts that may be paid under sections 28-7144 and 28-7146 on a case by case basis for good cause as determined pursuant to department rules.

B. A person shall not be required to move from a dwelling on account of a program or project undertaken by a displacing agency unless the displacing agency is satisfied that comparable replacement housing is available to the person.

C. The displacing agency shall ensure that a person is not required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in any of the following cases:

1. A major disaster as defined in section 102(2) of the federal disaster relief act of 1974.

2. A national emergency declared by the president of the United States.

3. Any other emergency that requires the person to move immediately from the dwelling because continued occupancy of the dwelling by the person is a substantial danger to the health or safety of the person.

28-7311. Urban and rural logo sign programs; rules; definitions

A. The department may establish an urban and a rural logo sign program. Notwithstanding sections 28-648, 28-7048 and 28-7053, as part of the program the department may contract with a third party to install and maintain specific services information signs, known as logo signs, on any class of state highway or interstate highway system in this state. If the department contracts with a third party, the third party shall agree in the contract to:

1. Furnish, install, maintain and replace signs for the benefit of business advertisers who provide gas, food, lodging, twenty-four hour pharmacy service, attraction and camping facilities for the general public.

2. Lease advertising space on the signs to operators of the facilities prescribed in paragraph 1 of this subsection.

B. Notwithstanding sections 28-648, 28-7048 and 28-7053, as part of the rural logo sign program the department may contract with a third party to install and maintain specific services information signs, known as logo signs, on any class of state highway or interstate highway system, located outside of an urbanized area with a population of one hundred thousand or more persons of this state. If the department contracts with a third party, the third party shall agree in the contract to:

1. Furnish, install, maintain and replace signs for the benefit of business advertisers that provide gas, food, lodging, twenty-four hour pharmacy service, attraction and camping facilities for the general public.

2. Lease advertising space on the signs to operators of the facilities prescribed in paragraph 1 of this subsection.

C. The department shall adopt rules to implement and operate the logo sign programs. Costs incurred under the programs established by this section shall be paid under agreements negotiated between the department or third party and the business advertisers.

D. The department may enter into a revenue sharing agreement with the third party. The department shall deposit, pursuant to sections 35-146 and 35-147, revenues generated, less program operating costs, in the state highway fund established by section 28-6991.

E. For the purposes of this section:

1. "Population" means the population determined in the most recent United States decennial census or in the most recent special census as provided in section 28-6532.

2. "Urbanized area" means an urbanized area as defined in the decennial census by the United States bureau of the census.

28-7363. Design-build method of project delivery

A. Notwithstanding any other law, the department may use the design-build method of project delivery on a project if the department makes a determination in writing that it is appropriate and in the best interests of the department to use the design-build method of project delivery for that project, except that:

1. The department shall not enter into a contract to operate any structure, facility or other item pursuant to this article.

2. Each design-build project shall be a specific single project.

3. The department shall not commence any design-build project after December 31, 2030. For the purposes of this paragraph, a project is commenced on the date the department solicits the contract for the project. If the department solicits a design-build contract on or before December 31, 2030, the contract may be executed and services and construction under the contract may be rendered in whole or in part after December 31, 2030.

B. The estimated cost of the project shall not include the cost to procure any right-of-way or other cost of condemnation. The cost to procure any right-of-way or other cost of condemnation remains at all times the responsibility of the department. The department shall obtain all necessary rights-of-way.

C. The department is responsible for preparing and acquiring all environmental documents, including the scope of any remediation and required clearances.

D. If construction of a design-build project involves railroad facilities, the railroad shall approve the use of the design-build delivery method before the department awards the design-build contract.

E. To ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the director, in conjunction with the appropriate and affected professionals and contractors, may adopt procedures for procuring a project using the design-build method of project delivery.

F. The provisions of sections 28-6923 and 28-6924 relating to bid, performance and payment bonds and to change orders, progress payments, contract retentions, definitions and authority to award contracts apply to department design-build projects for transportation facilities pursuant to this article.

28-7365. Design-build; two-phase solicitation

A. If the department determines that the design-build method of project delivery is appropriate, the department shall establish a two-phase procedure for awarding the design-build contract. The department shall limit each solicitation for a design-build contract to a specific single project.

B. During phase one, and before solicitation, the director shall appoint a selection team of at least three persons. At least one-half of the selection team shall be architects or engineers who are registered pursuant to section 32-121. The selection team members may be either department employees or outside consultants. The selection team shall also include at least one person who is a senior management employee of a licensed contractor who is not involved in the project. Any architect or engineer who is serving on the selection team and who is not a department employee shall not be otherwise involved in the project. The department shall prepare documents for a request for qualifications.

C. The request for qualifications shall include all of the following:

1. The minimum qualifications of the design-builder.

2. A scope of work statement and schedule.

3. Documents defining the project requirements.

4. The form of contract to be awarded.

5. The selection criteria for compiling a short list and the number of firms to be included on the short list. At least three but not more than five firms shall be included on the short list.

6. A description of the phase two requirements and subsequent management needed to bring the project to completion.

7. The maximum time allowable for design and construction.

8. The department's estimated cost of design and construction.

D. The selection team shall evaluate the design-build qualifications of responding firms and shall compile a short list of firms in accordance with technical and qualifications-based criteria. The number of firms on the short list shall be the number of firms specified in the request for qualifications, except that, if a smaller number of firms responds to the solicitation or if one or more of the firms on the short list drop out so that only two firms remain on the short list, the selection team may proceed with the selection process with the remaining firms if at least two firms remain or the department may readvertise as the department deems necessary.

E. During phase two, the department shall issue a request for proposals to the design-builders on the short list. The request shall include:

1. The scope of work, including programmatic, performance and technical requirements, conceptual design, specifications and functional and operational elements for the delivery of the completed project, which shall all be prepared by an architect or engineer, as appropriate, who is registered pursuant to section 32-121.

2. A description of the qualifications required of the design-builder and the selection criteria, including the weight or relative order, or both, of each criterion.

3. Copies of the contract documents that the successful proposer will be expected to sign.

4. The maximum time allowable for design and construction.

5. The department's estimated cost of design and construction.

6. The requirement that a proposal be segmented into two parts, a technical proposal and a price proposal. Each proposal shall be in a separately sealed, clearly identified package and shall include the date and time of the submittal deadline. The technical proposal shall include a schedule, schematic design plans and specifications, technical reports, calculations, permit requirements, applicable development fees and other data requested in the request for proposals. The price proposal shall contain all design, construction, engineering, inspection and construction costs of the proposed project.

7. The date, time and location of the public opening of the sealed price proposals.

8. Other information relevant to the project.

F. If stated in the request for proposals, in order to inform each firm whether the firm's concept is responsive to the request for proposals, the department may enter into a separate confidential discussion with each firm on the short list to discuss alternative technical concepts that the firm may propose.

G. The department shall proceed as follows:

1. The selection team shall review the technical proposals and score the technical proposals using the selection criteria in the request for proposals. The technical review team shall then submit a technical proposal score for each design-builder to the department. The technical review team shall reject any proposal it deems to be nonresponsive.

2. The department shall announce the technical proposal score for each design-builder, shall publicly open the sealed price proposals and shall divide each design-builder's price by the score that the selection team has given to it to obtain an adjusted score. The design-builder selected shall be that responsive and responsible design-builder whose adjusted score is the lowest.

3. If a time factor is included with the selection criteria in the request for proposals package, the department may also adjust the bids using a value of the time factor established by the department. The value of the time factor shall be a value per day. The adjustment shall be based on the total time value. The total time value is the design-builder's proposed number of days to complete the project multiplied by the factor. The time adjusted price is the total time value plus the bid amount. This adjustment shall be used for selection purposes only and shall not affect the department's liquidated damages schedule or incentive and disincentive program. An adjusted score shall then be obtained by dividing each design-builder's time adjusted price by the score given by the technical review team. The department shall select the responsive and responsible design-builder whose adjusted score is the lowest.

4. Unless all proposals are rejected, the board shall award the contract to the responsive and responsible design-builder with the lowest adjusted score. The board reserves the right to reject all proposals.

5. The department shall award a stipulated fee equal to four-tenths of one percent of the department's estimated cost of design and construction to each short list responsible proposer that provides a responsive, but unsuccessful proposal. If the department does not award a contract, all responsive proposers shall receive the stipulated fee. If the department cancels the contract before reviewing the technical proposals, the department shall award each design-builder on the selected short list a stipulated fee equal to four-tenths of one percent of the department's estimated cost of design and construction. The department shall pay the stipulated fee to each proposer within ninety days after the award of the contract or the decision not to award a contract. In consideration for paying the stipulated fee, the department may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful proposers. Notwithstanding the other provisions of this paragraph, an unsuccessful short list proposer may elect to waive the stipulated fee. If an unsuccessful short list proposer elects to waive the stipulated fee, the department may not use ideas and information contained in the proposer's proposal, except that this restriction does not prevent the department from using any idea or information if the idea or information is also included in a proposal of a short list proposer that accepts the stipulated fee.

28-7907. Agreement with secretary of transportation

A. The director shall enter into the agreement with the United States secretary of transportation provided for by 23 United States Code section 131(d) providing the standards governing the size, lighting and spacing of outdoor advertising authorized under section 28-7902, subsection A, paragraphs 4 and 5 and defining an unzoned commercial or industrial area.

B. If the standards and definitions contained in the agreement do not agree substantially with this article, the agreement is not effective until this article is amended to conform with the terms of the agreement.

28-7908. Rules

A. The director shall adopt and enforce rules governing the placing, maintenance and removal of outdoor advertising. The rules shall be consistent with:

1. The public policy of this state to protect the safety and welfare of the traveling public.

2. This article.

3. The terms of the agreement with the United States secretary of transportation pursuant to section 28-7907.

4. The national standards, criteria and regulations promulgated by the United States secretary of transportation pursuant to 23 United States Code section 131.

B. The director shall define by rule unzoned commercial or industrial areas, defined hardship areas and defined areas along the interstate and primary systems. The definitions shall:

1. Be consistent with the definitions of these areas provided in this article and in the agreement with the United States secretary of transportation pursuant to section 28-7907.

2. Take into consideration the negative economic impact and economic hardship of these areas.

28-7909. Permits; fees; disposition

A. The director shall issue permits to place or maintain, or both, outdoor advertising authorized under section 28-7902, subsection A, paragraphs 1, 4, 5, 6, 7 and 8 and to establish and collect fees for the issuance of the permits. The fees shall not exceed the actual costs to the department.

B. The department shall deposit, pursuant to sections 35-146 and 35-147, the fees collected under this article in the state highway fund.

E-7.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 12

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 13, 2025

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 12

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to six (6) rules in Title 9, Chapter 22, Article 12 regarding Behavior Health Services.

In the last 5YRR for these rules, which was approved by the Council in January 2020, AHCCCS proposed to amend rules R9-22-1202 and R9-22-1207 to replace all references to ADHS with references to AHCCCS. AHCCCS indicates it did not complete its prior proposed course of action because the agency's resources at the time had been diverted to address COVID-19 public health emergency. At this time, AHCCCS indicates this 5YRR adopts those changes recommended in the prior 5YRR as well as few additional technical and clarifying changes, and AHCCCS indicates it has already submitted a request for an exemption from the rulemaking moratorium from the Governor's Office and plans to initiate the regular rulemaking immediately following GRRC's approval of this 5YRR.

Proposed Action

In the current report, AHCCCS seeks to update all references to ADHS, DBHS, RBHA, and RHBA as well as other technical and clarifying changes as outlined in more detail below.

AHCCCS indicates it has requested an exemption from the rulemaking moratorium from the Governor's Office to begin a rulemaking immediately following Council approval of this report and anticipates submitting this rulemaking to Council in December 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

According to AHCCCS, the economic, small business, and consumer impact of this chapter aligns with the projection made in the last 5YRR. In the last 5YRR, it was anticipated that none of the changes would have any effect on the economic impact of this chapter and the actual economic impact remains the same as had been anticipated. These regulations govern administration of behavioral health services to AHCCCS members, as well as eligibility for such coverage by AHCCCS. There is no economic, small business or consumer financial impact beyond the existing cost of the agency operations. Additionally, the changes suggested in this 5YRR are clarifying, therefore the impact on the economy remains the same.

Stakeholders include AHCCCS, its members, the Department of Health Services, contractors, behavioral healthcare services providers, and Children's Rehabilitative Services (CRS).

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 Administration states that the rules impose the least burden and cost to achieve the benefits provided to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

AHCCCS indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are generally consistent with other rules and statutes except for the following:

- **R9-22-1205(F)(1):**

    - A.A.C. citation reference should be updated. Typographical errors should be corrected.
- **R9-22-1205(H)(1):**
    - Citation in this rule should be corrected to state "R9-22-1201" as the definition is not found in "R9-10" as it currently reads.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the following rules are not currently enforced as written:

- **R9-22-1201:**
    - The definition of 'Behavioral Health Technician' and 'Clinical oversight' should be updated to refer to the Department of Health Services definitions. The definition for Health Plan should be added to reflect ACC transition of RBHAs to MCOs.
- **R9-22-1202:**
    - Rule should be repealed as Division of Behavioral Health Services (DBHS) is no longer at ADHS, and these processes are further outlined in AHCCCS policy
- **R9-22-1205(G):**
    - Reference to "ADHS/DBHS" should be removed as DBHS is no longer at ADHS.
- **R9-22-1205(H)(6):**
    - Reference to "RBHA" should be removed.
- **R9-22-1207(A)(1):**
    - Reference to "RHBA" should be replaced with "health plan."
- **R9-22-1207(A)(2):**
    - Reference to "RHBA" should be replaced with "health plan."
- **R9-22-1207(A)(5):**
    - Reference to "ADHS/DBHS" should be removed as DBHS is no longer at ADHS.
- **R9-22-1207(A)(7):**
    - Reference to "RHBA" should be replaced with "health plan."
- **R9-22-1207(B):**
    - Reference to "RBHA" and "ADHS/DBHS" should be removed.

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

AHCCCS indicates 42 C.F.R. 438 is relevant to these rules. AHCCCS states these rules are not more stringent than the corresponding federal law.

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. AHCCCS indicates the rules do not require the issuance of a license, permit, or agency authorization.

11. Conclusion

This 5YRR from AHCCCS relates to six (6) rules in Title 9, Chapter 22, Article 12 regarding Behavior Health Services. AHCCCS seeks to update all references to ADHS, DBHS, RBHA, and RHBA as well as other technical and clarifying changes as outlined above. AHCCCS indicates it has requested an exemption from the rulemaking moratorium from the Governor's Office to begin a rulemaking immediately following Council approval of this report and anticipates submitting this rulemaking to Council in December 2024.

Council staff recommends approval of this report.

September 27, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 12;

Dear Ms. Klein

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 12 due on September 30, 2024.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Chief Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 12

September 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01(F)

Specific Statutory Authority: A.R.S. § 36-2907

2. The objective of each rule:

Rule	Objective
R9-22-1201	This rule provides definitions for terms used in behavioral health services by Arizona Health Care Cost Containment System (AHCCCS).
R9-22-1202	This rule explains the responsibilities of Arizona Department of Health Services (ADHS), Contractor, Administration and Children's Rehabilitative Services (CRS).
R9-22-1203	This rule explains the eligibility requirements for covered services by Arizona Health Care Cost Containment System (AHCCCS).
R9-22-1204	This rule explains general service requirements by Arizona Health Care Cost Containment System (AHCCCS).
R9-22-1205	This rule outlines the scope and coverage of behavioral health services offered by Arizona Health Care Cost Containment System (AHCCCS).
R9-22-1207	This rule explains the general provisions for payment for claim submissions.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No __**

4. Are the rules consistent with other rules and statutes? **Yes ___** **No _X_**

Rule	Objective
R9-22-1205(F)(1)	A.A.C. citation reference should be updated. Typographical errors should be corrected.
R9-22-1205(H)(1)	Citation in this rule should be corrected to state "R9-22-1201" as definition is not found in R9-10 as it currently reads.

5. Are the rules enforced as written? **Yes __** **No _X_**

Rule	Objective
R9-22-1201	The definition of 'Behavioral Health Technician' and 'Clinical oversight' should be updated to refer to the Department of Health Services definitions. The definition for Health Plan should be added to reflect ACC transition of RBHAs to MCOs.
R9-22-1202	Rule should be repealed as Division of Behavioral Health Services (DBHS) is no longer at ADHS, and these processes are further outlined in AHCCCS policy
R9-22-1205(G)	Reference to "ADHS/DBHS" should be removed as DBHS is no longer at ADHS.

R9-22-1205(H)(6)	Reference to "RBHA" should be removed.
R9-22-1207(A)(1)	Reference to "RHBA" should be replaced with "health plan."
R9-22-1207(A)(2)	Reference to "RHBA" should be replaced with "health plan."
R9-22-1207(A)(5)	Reference to "ADHS/DBHS" should be removed as DBHS is no longer at ADHS.
R9-22-1207(A)(7)	Reference to "RHBA" should be replaced with "health plan."
R9-22-1207(B)	Reference to "RBHA" and "ADHS/DBHS" should be removed.

6. Are the rules clear, concise, and understandable? **Yes _X_** **No __**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___** **No _X_**

8. Economic, small business, and consumer impact comparison:

The economic, small business, and consumer impact of this chapter align with the projections made in the last Five-Year Review Report. In the last Five-Year Review Report, it was anticipated that none of the changes would have any effect on the economic impact of this chapter and the actual economic impact remains the same as had been anticipated. These regulations govern administration of behavioral health services to AHCCCS members, as well as eligibility for such coverage by AHCCCS. There is no economic, small business or consumer financial impact beyond the existing cost of the agency operations. The changes suggested in this Five-Year Review Report are clarifying, therefore the impact on the economy remains the same.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___** **No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The recommendations made in the prior Five-Year Review Report were not made because agency's resources at the time had been diverted to address COVID-19 public health emergency. At this time, the Five-Year Review Report adopts those changes recommended in the prior Five-Year Review Report as well as few additional technical and clarifying changes, and AHCCCS has already submitted a request for an exemption from the rulemaking moratorium from the Governor's Office and plans to initiate the regular rulemaking immediately following GRRC's approval of this Five-Year Review Report.

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 changes that are proposed in this Five-Year Review Report are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. Furthermore, they impost the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

12. Are the rules more stringent than corresponding federal laws? **Yes ___** **No _X_**

The rules are not more stringent than 42 C.F.R. 438.

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 do not require an issuance of a regulatory permit, license, or agency authorization, therefore, compliance with the general permit requirements of A.R.S. 41-1037 or explanation why the agency believes an exception applies is not applicable.

14. Proposed course of action

The Administration has requested an exemption from the rulemaking moratorium from the Governor's Office to begin a rulemaking immediately following GRRC's approval of this report in order to make the changes outlined above and update the rules in Article 12. The Administration anticipates submitting this rulemaking to Council in December 2024.

Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1107. Reserved

R9-22-1108. Request for a Compromise

A. To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.

B. Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.

1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision. A failure to respond to the Notice of Compromise Decision will lead to the decision being upheld.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4). Amended by final rulemaking at 30 A.A.R. 925 (May 10, 2024), with an immediate effective date of April 25, 2024 (Supp. 24-2).

R9-22-1109. Failure to Respond to the Notice of Intent

If a person fails to respond timely to the Notice of Intent, AHCCCS shall uphold the original penalty, assessment, or penalty and assessment.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1110. Request for State Fair Hearing

A. To request a State Fair Hearing regarding a dispute concerning a penalty, assessment, or penalty and assessment, the person shall file a written request for a State Fair Hearing with AHCCCS within 60 days from the date of the receipt of the Notice of Intent under R9-22-1106 or within 30 days from the date of receipt of the Notice of Compromise Decision under R9-22-1108, if applicable.

B. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the person.

C. AHCCCS shall mail a Director's Decision to the person no later than 30 days after the date the Administrative Law Judge sends the decision of the Office of Administrative Hearings (OAH) to AHCCCS.

D. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a person may withdraw the hearing request only by sending a written request for withdrawal to OAH.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1111. Issues and Burden of Proof

A. Preponderance of evidence. In any State Fair Hearing conducted under R9-22-1110, AHCCCS shall prove by a preponderance of the evidence that a person presented or caused to be presented each claim in violation of this Article and any aggravating circumstances under R9-22-1105. A person shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty, assessment, or penalty and assessment.

B. Statistical sampling.

1. In meeting the burden of proof described in subsection (A), AHCCCS may introduce the results of a statistical sampling study as evidence of the number and amount of claims that were presented or caused to be presented by the person. A statistical sampling study constitutes prima facie evidence of the number and amount of claims if computed by valid statistical methods.
2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once AHCCCS has made a prima facie case as described in subsection (B)(1). AHCCCS shall be given the opportunity to rebut this evidence.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1112. Withdrawal and Continuances

AHCCCS may withdraw the Notice of Intent at any time. Prior to referring a matter to the Office of Administrative Hearings the parties may mutually agree to a continuance.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1201. Definitions

Definitions. The following definitions apply to this Article:

"Adult behavioral health therapeutic home" as defined in 9 A.A.C. 10, Article 1.

"Agency" for the purposes of this Article means a behavioral health facility, a classification of a health care institution, including a mental health treatment agency defined in A.R.S. § 36-501, that is licensed to provide behavioral health services according to A.R.S. Title 36, Chapter 4.

"Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.

"Behavior management services" means services that assist the member in carrying out daily living tasks and other activi-

ties essential for living in the community, including personal care services.

"Behavioral health therapeutic home care services" means interactions that teach the client living, social, and communication skills to maximize the client's ability to live and participate in the community and to function independently, including assistance in the self-administration of medication and any ancillary services indicated by the client's treatment plan, as appropriate.

"Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

"Behavioral health technician" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution, the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33; and

Are provided with clinical oversight by a behavioral health professional.

"Case management" for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.

"Certified psychiatric nurse practitioner" means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).

"Clinical oversight" means as described under 9 A.A.C. 10.

"Cost avoid" means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).

"Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.

"Court-ordered pre-petition screening" has the same meaning as "pre-petition screening" in A.R.S. § 36-501.

"Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.

"Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.

"Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.

"Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.

"Health care institution" has the same meaning as defined in A.R.S. § 36-401.

"Health care practitioner" means a:

Physician;

Physician assistant;

Nurse practitioner; or

Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.

"Licensee" means the same as in 9 A.A.C. 10, Article 1.

"Medical practitioner" means a physician, physician assistant, or nurse practitioner.

"Partial care" means a day program of services provided to individual members or groups that is designed to improve the ability of a person to function in a community, and includes basic, therapeutic, and medical day programs.

"Physician assistant" means the same as in A.R.S. § 32-2501 except that when providing a behavioral health service, the physician assistant shall be supervised by an AHCCCS-registered psychiatrist.

"Psychiatrist" means a physician who meets the licensing requirements under A.R.S. § 32-1401 or a doctor of osteopathy who meets the licensing requirements under A.R.S. § 32-1800, and meets the additional requirements of a psychiatrist under A.R.S. § 36-501.

"Psychologist" means a person who meets the licensing requirements under A.R.S. §§ 32-2061 and 36-501.

"Qualified behavioral health service provider" means a behavioral health service provider that meets the requirements of R9-22-1206.

"Respite" means a period of care and supervision of a member to provide rest or relief to a family member or other person caring for the member. Respite provides activities and services to meet the social, emotional, and physical needs of the member during respite.

"TRBHA" or "Tribal Regional Behavioral Health Authority" means a Native American tribe under contract with ADHS/DBHS to coordinate the delivery of behavioral health services to eligible and enrolled members of the federally-recognized tribal nation.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

A. ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS' responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health

services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as "mental disorders" in the latest International Classification of Diseases (ICD) code set as required by AHCCCS claims and encounters.

B. ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:
1. From an IHS or tribally operated 638 facility,
2. From a TRBHA, or
3. From a RBHA.

C. Contractor responsibilities. A contractor shall:
1. Refer a member to a RBHA under the contract terms;
2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
3. Coordinate a member's transition of care and medical records; and
4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.

D. Administration and CRS responsibilities.
1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FFS or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.
2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct typographical errors, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

R9-22-1203. Eligibility for Covered Services

Title XIX members. A member determined eligible under A.R.S. § 36-2901(6)(a) or (g) except for the failure to meet U.S. citizenship or qualified alien status requirements, shall receive medically necessary covered services under Article 12 and Article 2.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1204. General Service Requirements

A. Services. Behavioral health services include mental health, substance abuse, and physical services. Medically necessary services shall be covered and service requirements met as described under Article 2 and Article 5.

B. Notification to Administration for American Indians enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after an American Indian member enrolled with a tribal contractor presents to a behavioral health hospital for inpatient emergency behavioral health services.

C. Restrictions and limitations. Room and board is not a covered service unless provided in a behavioral health inpatient facility under R9-22-1205.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1205. Scope and Coverage of Behavioral Health Services

A. Inpatient behavioral health services. The following inpatient services are covered subject to the limitations and exclusions in this Article and Article 2.
1. Covered inpatient behavioral health services include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment, if the service is provided under the direction of a physician in a Medicare-certified:
   a. General acute care hospital,
   b. Inpatient psychiatric unit in a general acute care hospital, or

c. Behavioral health hospital.
2. Inpatient service limitations:
a. Inpatient services, other than emergency services specified in this Section, are not covered unless prior authorization is obtained.
b. Inpatient services and room and board are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
i. A licensed psychiatrist,
ii. A certified psychiatric nurse practitioner,
iii. A licensed physician assistant,
iv. A licensed psychologist,
v. A licensed clinical social worker,
vi. A licensed marriage and family therapist,
vii. A licensed professional counselor,
viii. A licensed independent substance abuse counselor, and
ix. A medical practitioner.

B. Behavioral Health Inpatient facility for children. Services provided in a Behavioral Health Inpatient facility for children as defined in 9 A.A.C. 10, Article 3 are covered subject to the limitations and exclusions under this Article.
1. Behavioral Health Inpatient facility for children services are not covered unless provided under the direction of a licensed physician in a licensed Behavioral Health Inpatient facility for children accredited by an AHCCCS-approved accrediting body as specified in contract.
2. Covered Behavioral Health Inpatient facility for children services include room and board and treatment services for behavioral health and substance abuse conditions.
3. Inpatient Behavioral Health Inpatient facility for children service limitations.
a. Services are not covered unless prior authorized, except for emergency services as specified in this Section.
b. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
i. A licensed psychiatrist,
ii. A certified psychiatric nurse practitioner,
iii. A licensed physician assistant,
iv. A licensed psychologist,
v. A licensed clinical social worker,
vi. A licensed marriage and family therapist,
vii. A licensed professional counselor,
viii. A licensed independent substance abuse counselor, and
ix. A medical practitioner.
4. The following may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:
a. Laboratory services, and
b. Radiology services.

C. Covered Inpatient sub-acute agency services. Services provided in a inpatient sub-acute facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.
1. Inpatient sub-acute facility services are not covered unless provided under the direction of a licensed physician in a licensed inpatient sub-acute facility that is accredited by an AHCCCS-approved accrediting body.
2. Covered Inpatient sub-acute facility services include room and board and treatment services for behavioral health and substance abuse conditions.
3. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
a. A licensed psychiatrist,
b. A certified psychiatric nurse practitioner,
c. A licensed physician assistant,
d. A licensed psychologist,
e. A licensed clinical social worker,
f. A licensed marriage and family therapist,
g. A licensed professional counselor,
h. A licensed independent substance abuse counselor, and
i. A medical practitioner.
4. The following may be billed independently if prescribed by a provider specified in this Section who is operating within the scope of practice:
a. Laboratory services, and
b. Radiology services.

D. Behavioral health residential facility services. Services provided in a licensed behavioral health residential facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.
1. Behavioral health residential facility services are not covered unless provided by a licensed behavioral health residential facility.
2. Covered services include all non-prescription drugs as defined in A.R.S. § 32-1901, non-customized medical supplies, and clinical oversight or direct supervision of the behavioral health residential facility staff, whichever is applicable. Room and board are not covered services.
3. The following licensed and certified providers may bill independently for services:
a. A licensed psychiatrist,
b. A certified psychiatric nurse practitioner,
c. A licensed physician assistant,
d. A licensed psychologist,
e. A licensed clinical social worker,
f. A licensed marriage and family therapist,
g. A licensed professional counselor,
h. A licensed independent substance abuse counselor, and

E. Partial care. Partial care services are covered subject to the limitations and exclusions in this Article.
1. Partial care services are not covered unless provided by a licensed and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and medical day programs.
2. Partial care services. Educational services that are therapeutic and are included in the member's behavioral health treatment plan are included in per diem reimbursement for partial care services.

F. Outpatient services. Outpatient services are covered subject to the limitations and exclusions in this Article and Article 2.
1. Outpatient services include the following:
a. Screening provided by a behavioral health professional or a behavioral health technician as defined in R9-22-1201;

b. A behavioral health assessment provided by a behavioral health professional or a behavioral health technician;
c. Counseling including individual therapy, group therapy, and family therapy provided by a behavioral health professional or a behavioral health technician;
d. Behavior management services as defined in R9-22-1201; and
e. Psychosocial rehabilitation services as defined in R9-22-201.

2. Outpatient service limitations.
a. The following licensed or certified providers may bill independently for outpatient services:
i. A licensed psychiatrist;
ii. A certified psychiatric nurse practitioner;
iii. A licensed physician assistant as defined in R9-22-1201;
iv. A licensed psychologist;
v. A licensed clinical social worker;
vi. A licensed professional counselor;
vii. A licensed marriage and family therapist;
viii. A licensed independent substance abuse counselor;
ix. A medical practitioner; and
x. An outpatient treatment center or substance abuse transitional facility licensed under 9 A.A.C. 10, Article 14, that is an AHCCCS-registered provider.
b. A behavioral health practitioner not specified in subsections (F)(2)(a)(i) through (x), who is contracted with or employed by an AHCCCS-registered behavioral health agency shall not bill independently.

G. Emergency behavioral health services are covered subject to the limitations and exclusions under this Article. In order to be covered, behavioral health services shall be provided by qualified service providers under R9-22-1206. ADHS/DBHS shall ensure that emergency behavioral health services are available 24 hours per day, seven days per week in each GSA for an emergency behavioral health condition for a non-FES member as defined in R9-22-201.

H. Other covered behavioral health services. Other covered behavioral health services include:
1. Case management as defined in 9 A.A.C. 10, Article 1;
2. Laboratory and radiology services for behavioral health diagnosis and medication management;
3. Medication;
4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
5. Respite care as described within subsection (J);
6. Behavioral health therapeutic home care services provided by a RBHA in a professional foster home defined in 6 A.A.C. 5, Article 58 or in an adult behavioral health therapeutic home as defined in 9 A.A.C. 10, Article 1;
7. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.

I. Transportation services. Transportation services are covered under R9-22-211.

J. Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 17 A.A.R. 1870, 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. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1206. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1207. General Provisions for Payment

A. Claims submissions.
1. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member to the appropriate RBHA.
2. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member to the appropriate RBHA.
3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
5. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).
6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
7. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost

avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.

B. Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, the Administration or a contractor.

Historical Note
Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1208. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)

Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).

Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-1301. Children's Rehabilitative Services (CRS) 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:

"Active treatment" means there is a current need for treatment of the CRS qualifying condition(s) or it is anticipated that treatment or evaluation for continuing treatment of the CRS qualifying condition(s) will be needed within the next 18 months from the last date of service for treatment of any CRS qualifying condition.

"CRS application" means a submitted form with any additional documentation required by the Administration to determine whether an individual is medically eligible for CRS.

"CRS condition" means a list of medical condition(s) in R9-22-1303 and which are referred to as covered conditions in A.R.S. § 36-2912.

"Functionally limiting" means a restriction having a significant effect on an individual's ability to perform an activity of daily living as determined by a provider.

"Medically eligible" means meeting the medical eligibility requirements of R9-22-1303.

"Redetermination" means a decision made by the Administration regarding whether a member continues to meet the requirements in R9-22-1302.

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements
Beginning October 1, 2013, an AHCCCS member who needs active treatment for one or more of the qualifying medical condition(s) in R9-22-1303 shall be given a CRS Designation. An American Indian member can choose to receive CRS services through an American Indian Health Plan or a contractor. A member enrolled in CMDP shall obtain CRS services through CMDP. The contractor shall provide covered services necessary to treat the condition(s) and other services described within the contract. The effective date of the CRS Designation shall be as specified in contract.

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1303. Medical Eligibility
The following lists identify those medical condition(s) that do qualify for CRS services as well as those that do not qualify for CRS services. The list of condition(s) that qualify for a CRS Designation is all inclusive. The list of condition(s) that do not qualify for a CRS Designation is not an all-inclusive list.

1. Cardiovascular System
   a. CRS condition(s) that qualify for CRS medical eligibility:
      i. Arrhythmia,
      ii. Arteriovenous fistula,
      iii. Cardiomyopathy,
      iv. Conduction defect,
      v. Congenital heart defect other than isolated small Ventricular Septal Defects (VSD), Patent

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.

36-2907. Covered health and medical services; modifications; related delivery of service requirements; rules; definition

A. Subject to the limits and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital to care and treat inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.

2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.

3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.

4. Medications that are ordered on prescription by a physician or a dentist who is licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.

5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.

6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.

7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.

8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.

9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.

10. Nonexperimental transplants approved for title XIX reimbursement.

11. Dental services as follows:

(a) Except as provided in subdivision (b) of this paragraph, for persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than $1,000 per member.

(b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that exceed the limit prescribed in subdivision (a) of this paragraph.

12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.

13. Hospice care.

14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

15. Subject to approval by the centers for medicare and medicaid services, medically necessary chiropractic services that are performed by a chiropractor who is licensed pursuant to title 32, chapter 8 and that are ordered by a primary care physician or primary care practitioner pursuant to rules adopted by the administration. The primary care physician or primary care practitioner may initially order up to twenty visits annually that include treatment and may request authorization for additional chiropractic services in that same year if additional chiropractic services are medically necessary.

16. For up to ten program hours annually, diabetes outpatient self-management training services, as defined in 42 United States Code section 1395x, if prescribed by a primary care practitioner in either of the following circumstances:

(a) The member is initially diagnosed with diabetes.

(b) For a member who has previously been diagnosed with diabetes, either:

(i) A change occurs in the member's diagnosis, medical condition or treatment regimen.

(ii) The member is not meeting appropriate clinical outcomes.

B. The limits and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to $12,500 per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limits for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules providing for transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may allow the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in

that state pursuant to licensing statutes in that state that are similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

K. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

L. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for transferring patients and medical records and initiating medical care.

M. Notwithstanding section 36-2901.08, monies from the hospital assessment fund established by section 36-2901.09 may not be used to provide chiropractic services as prescribed in subsection A, paragraph 15 of this section.

N. Notwithstanding section 36-2901.08, monies from the hospital assessment fund established by section 36-2901.09 may not be used to provide diabetes outpatient self-management training services as prescribed in subsection A, paragraph 16 of this section.

O. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

E-8.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **Department of Health Services**
Title 9, Chapter 6 Article 5

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) covers four (4) rules in Title 9, Chapter 6, Article 5 related to Rabies Control.

In the 5YRR approved by the council in 2020, the Department stated a plan to revise the rules to address the amount of time a dog or cat exposed to rabies is to be confined. The Department completed this course of action through an expedited rulemaking at 27 A.A.R. 1329 with an immediate effective date of August 4, 2021.

Proposed Action

The Department plans to amend the rules in 9 A.A.C 6 Article 5 to address the amount of time an animal must be revaccinated after the animal has been exposed to rabies and when a non-vaccinated animal must be vaccinated after exposure to rabies. Both revisions are intended to align with the National Association of State Public Health Veterinarians. The Department also plans on improving the clarity of the rules. The Department plans on submitting a NFR to the Council by October 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific statutorily authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules were last amended through a Notice of Final Expedited Rulemaking, effective August 4, 2021. The Department did not complete an economic, small business, and consumer impact statement with this 2021 expedited rulemaking. It is believed that the amendments made in the 2021 expedited rulemaking did not have any additional economic impact on stakeholders. At the time of the 5YRR in 2019, the designated annual costs and revenues remained the same. There have been no significant changes from the economic, small business, and consumer impact of these rules between the 2019 5YRR and now. The Department continues to believe the costs and benefits identified in the EIS are consistent with the actual costs and benefits of the rules. Upon review, the Department believes the economic impact of the rules in Article 5 has continued to be consistent with the impact predicted in 2004.

Stakeholders are identified as animal control agencies, the Department, 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 has determined that the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department has not received written criticism of the rules in the past five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable except for the following:

- R9-6-502
    - The section does not mention canine/wolf hybrids or cat/wild cat hybrids. Expectations are not clear for when these types of hybrid animals are exposed to rabies. The Department intends on adding this language to provide guidance.
    - Subsection (A)(1)(b) uses language "confine and observe" but does not properly explain what the expectations are for when an animal is confined and observed.
- R9-6-504
    - The rule currently states that an animal control agency must submit a report to the Department by April 30 every year. This does not reflect the current practice and the Department plans to amend the report to indicate that the report should be made available upon Department request.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department states the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are generally effective in achieving their objectives except for the following:

- R9-6-502
    - Subsection (A)(1)(a) could be improved by amending the length of time in which an animal would need to be revaccinated after the animal has been exposed to rabies. The update would be in line with the National Association of State Public Health Veterinarians.
    - Subsection (A)(2)(b) could be improved by amending the length of time in which an unvaccinated animal would need to be vaccinated after the animal has been exposed to rabies. The update would be in line with the National Association of State Public Health Veterinarians.

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 is no corresponding federal law for these 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

This Five Year Review Report from the Arizona Department of Health and Safety covers four rules in Title 9, Chapter 6, Article 5 covering rabies control in animals.

The Department indicates that one rule is not effective in achieving their objective and that two rules are not clear, concise, or understandable. The Department is proposing to amend the rules to address these issues and the Department anticipates submitting a Notice of Final Rulemaking to the council by October 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT OF HEALTH SERVICES

October 8, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 5, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 5, which is due on or before October 31, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Angie Trevino at angelica.trevino@azdhs.gov or (480) 589-0298.

Sincerely,

Stacie Gravito
Director's Designee

SG:at

Enclosures

ARIZONA DEPARTMENT
OF HEALTH SERVICES

ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES

COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 5. RABIES CONTROL

DUE: OCTOBER 31, 2024

SUBMITTED: OCTOBER 8, 2024

1. Authorization of the rule by existing statutes

General authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

Specific authority: A.R.S. §§ 11-1003 and 36-136(I)(1)

2. The objective of each rule:

Rule	Objective
R9-6-501. Definitions	The objective of the rule is to define terms used only in Article 5 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-6-502. Management of Exposed Animals	The objectives of the rule are to specify how an animal control agency shall handle animals, other than livestock, that are exposed to a rabid animal or an animal suspected of being rabid, and specify that livestock shall be handled according to A.A.C. R3-2-408.
R9-6-503. Suspect Cases	The objectives of the rule are to specify the term of confinement for an animal suspected of being rabid, and the treatment of the brain of an animal suspected of being rabid that has been euthanized by an animal control agency.
R9-6-504. Animal Control Agency Reporting Requirements	The objective of the rule is to specify the content of a report that is required to be submitted by animal control agencies to the Department by April 30 of each year.

3. Are the rules effective in achieving their objectives? **Yes ___** **No_X__**

Rule	Explanation
R9-6-502	R9-6-502(A)(1)(a): The Department of Health Services (Department) believes that this subsection could be improved by amending the time in which an animal must be revaccinated when the animal has been exposed to rabies. The Department intends to

	amend this time to be more closely aligned with the National Association of State Public Health Veterinarians (NASPHV) compendium. R9-6-502(A)(2)(b): The Department believes that this subsection could be improved by amending the time in which an animal, who is not vaccinated, must be vaccinated when the animal has been exposed to rabies. The Department intends to amend this time to be more closely aligned with the NASPHV compendium.

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 ___** **No __X_**

Rule	Explanation
R9-6-502	Subsection (A)(1)(b) uses the terms "confine and observe" to explain what an animal control agency should do when a dog, cat, or ferret is exposed to rabies. The Department proposes to amend or add language that clarifies what the expectations are when an animal is to be confined and observed in order to meet the standards.
R9-6-502	To make this Section clearer, the Department proposes to add language concerning canine/wolf hybrids and domestic cat/wild cat hybrids. The current rules do not mention these hybrids of animals. Therefore, it is not clear what the expectations are on how to manage their exposure to rabies. The Department proposes to add language to the rules that provides guidance on how these hybrids of animals are managed when they are exposed to rabies.
R9-5-504	To make this Section clearer, the rules should be updated to reflect current practice. This Section requires an animal control agency to submit a report every year by April 30. The rules should be amended to indicate that the report should be made available to the Department upon request as opposed to an annual requirement.

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___** **No__X__**

8. Economic, small business, and consumer impact comparison:

A.R.S. § 36-136(I)(1) requires the Department of Health Services (Department) to define and prescribe reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases. The Department serves as a repository for information about rabies control activities and provides assistance and guidance to animal control agencies. The Department also performs tests for rabies on animals submitted for testing and monitors human exposure to laboratory-confirmed rabid animals. The following table

provides the number of laboratory-confirmed rabies-positive animals and the number of humans exposed to laboratory-confirmed rabid animals from the last five years:

	2019	2020	2021	2022	2023	January 1, 2024 to August 30, 2024
Lab-confirmed Rabies Positive Animals	139	107	83	49	59	66
Humans Exposed to Lab-confirmed Rabid Animals	34	17	18	11	31	22

The rules in 9 A.A.C. 6, Article 5 were last amended through a Notice of Final Expedited Rulemaking at 27 A.A.R. 1329, effective August 4, 2021. The Department did not complete an economic, small business, and consumer impact statement with the 2021 expedited rulemaking. This last rulemaking included amending the days of confinement from 180 to 120 days when an animal exposed to rabies is not currently vaccinated against rabies. It is believed that the amendments made in the 2021 expedited rulemaking did not have any additional economic impact on the Department or animal control agencies, and the general public.

At the time of the five-year-review report in 2019, the Department continued to use the designated annual costs and revenues which were submitted with the 2004 rulemaking and are as follows: minimal when less than $1,000, moderate when between $1,000 to $10,000, and substantial when $10,000 or greater. These designated annual costs and revenues remains the same. The affected persons previously identified remain the same (the Department, animal control agencies, and the general public). There have been no significant changes from the economic, small business, and consumer impact of these rules between the 2019 five-year-review report and now.

Animal control agencies have a major responsibility for rabies control through immunization and licensure programs and through impounding and, if appropriate, euthanizing suspect rabies cases or exposed animals. The Department continues to believe the costs and benefits identified in the EIS are consistent with the actual costs and benefits of the rules. Upon review, the Department believes the economic impact of the rules in Article 5 has continued to be consistent with the impact predicted in 2004.

9. Has the agency received any business competitiveness analyses of the rules? Yes___ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The Department of Health Services (Department) completed the course of action indicated in the Department's previous five-year-review report.

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 rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes___ No __X_

Federal laws are not applicable to the rules in 9 A.A.C. 6, Article 5.

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 Department of Health Services has determined that A.R.S. 41-1037 does not apply to these rules. The rules in 9 A.A.C. 6, Article 5 do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department plans to amend the rules to address the issue identified in this report. The Department plans to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by October 2025.

effective January 28, 1987 (Supp. 87-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-414. Repealed

Historical Note
Amended effective February 25, 1976 (Supp. 76-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-415. Repealed

Historical Note
Amended effective February 25, 1976 (Supp. 76-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-416. Repealed

Historical Note
Amended effective February 25, 1976 (Supp. 76-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-417. Repealed

Historical Note
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-418. Repealed

Historical Note
Amended effective February 25, 1976 (Supp. 76-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-419. Repealed

Historical Note
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-420. Reserved

R9-6-421. Reserved

R9-6-422. Reserved

R9-6-423. Reserved

R9-6-424. Reserved

R9-6-425. Reserved

R9-6-426. Reserved

R9-6-427. Reserved

R9-6-428. Reserved

R9-6-429. Reserved

R9-6-430. Reserved

R9-6-431. Repealed

Historical Note
Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-432. Repealed

Historical Note
Amended effective February 25, 1976 (Supp. 76-1). Repealed effective October 19, 1993 (Supp. 93-4).

R9-6-433. Repealed

Historical Note
Repealed effective October 19, 1993 (Supp. 93-4).

ARTICLE 5. RABIES CONTROL

R9-6-501. Definitions
In this Article, unless otherwise specified:

1. "Animal control agency" means a board, commission, department, office, or other administrative unit of federal or state government or of a political subdivision of the state that has the responsibility for controlling rabies in animals in a particular geographic area.
2. "Approved rabies vaccine" means a rabies vaccine authorized for use in this state by the state veterinarian under A.A.C. R3-2-409.
3. "Cat" means an animal of the genus species *Felis domesticus*.
4. "Currently vaccinated" means that an animal was last immunized against rabies with an approved rabies vaccine:
   a. At least 28 days and no longer than one year before being exposed, if the animal has only received an initial dose of approved rabies vaccine;
   b. No longer than one year before being exposed, if the approved rabies vaccine is approved for annual use under A.A.C. R3-2-409; or
   c. No longer than three years before being exposed, if the approved rabies vaccine is approved for triennial use under A.A.C. R3-2-409.
5. "Dog" means an animal of the genus species *Canis familiaris*.
6. "Euthanize" means to kill an animal painlessly.
7. "Exposed" means bitten by or having touched a rabid animal or an animal suspected of being rabid.
8. "Ferret" means an animal of the genus species *Mustela putoriu*s.
9. "Not currently vaccinated" means that an animal does not meet the definition of "currently vaccinated."
10. "Rabid" means infected with rabies virus, a rhabdovirus of the genus *Lyssavirus*.
11. "Suspect case" means an animal whose signs or symptoms indicate that the animal may be rabid.

Historical Note
Amended effective December 22, 1976 (Supp. 76-5). Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Corrections, subsections (A), (B) and (C) (Supp. 77-5). Amended effective April 10, 1980 (Supp. 80-2). Former Section R9-6-116 renumbered without change as R9-6-501 effective January 28, 1987 (Supp. 87-1). Section R9-6-501 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-501 renumbered to R9-6-701, new Section R9-6-501 renumbered from R9-6-201 and amended effective October 19, 1993 (Supp. 93-4). Amended effective April 4, 1997 (Supp. 97-2). Former R9-6-501 renumbered to R9-6-502; new R9-6-501 renumbered from R9-6-105 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

R9-6-502. Management of Exposed Animals

A. An animal control agency shall manage an exposed dog, cat, or ferret as follows:
1. If the exposed dog, cat, or ferret is currently vaccinated, the animal control agency shall:
   a. Revaccinate the animal with an approved rabies vaccine within seven days after the date that the animal is exposed; and
   b. Confine and observe the animal in the owner's home or, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined

by the animal control agency, for 45 days after the animal is exposed; or

2. If the exposed dog, cat, or ferret is not currently vaccinated, the animal control agency shall:
   a. Euthanize the animal; or
   b. At the owner's request, confine the animal for 120 days, at the owner's expense, in a veterinary hospital or the animal control agency's facility, as determined by the animal control agency, and vaccinate the animal with an approved rabies vaccine 28 days before it is released from confinement.

B. An animal control agency that is aware of an exposed animal, other than a cat, dog, ferret, or livestock, shall:
1. Make every effort to capture the exposed animal as soon as it is identified, and
2. Euthanize the animal as soon as it is captured.

C. An animal control agency shall release from confinement a dog, cat, or ferret exposed to a suspect case when the animal control agency receives a negative rabies report on the suspect case from the Department.

D. Livestock shall be handled according to A.A.C. R3-2-408.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Amended effective April 10, 1980 (Supp. 80-2). Amended as an emergency effective August 31, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Emergency expired. Former R9-6-117 amended as a permanent rule by adding a new subsection (C) and repealing the former subsections (C), (D) and (E) effective January 21, 1983 (Supp. 83-1). Former Section R9-6-117 renumbered without change as R9-6-502 effective January 28, 1987 (Supp. 87-1). Section R9-6-502 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-502 renumbered to R9-6-702, new Section R9-6-502 renumbered from R9-6-202 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-502 renumbered to R9-6-503; new R9-6-502 renumbered from R9-6-501 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3). Amended by final expedited rulemaking at 27 A.A.R. 1329, with an immediate effective date of August 4, 2021 (Supp. 21-3).

R9-6-503. Suspect Cases

A. An animal control agency shall ensure confinement of a dog, cat, or ferret that is a suspect case until:
1. The animal dies,
2. The animal is euthanized, or
3. A veterinarian determines that the animal is not rabid.

B. When an animal control agency euthanizes a suspect case, the animal control agency shall avoid damaging the brain, so that rabies testing can be performed.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Amended effective April 10, 1980 (Supp. 80-2). Amended as an emergency effective August 31, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Emergency expired. Former R9-6-118 amended as a permanent rule by repealing subsection (C) and renumbering subsections (D) through (I) effective January 21, 1983 (Supp. 83-1). Former Section R9-6-118 renumbered without change as R9-6-503 effective January 28, 1987 (Supp. 87-1). Section R9-6-503 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-503 renumbered to R9-6-703, new Section R9-6-503 renumbered from R9-6-203 and amended effective October 19, 1993 (Supp. 93-4). Former R9-6-503 renumbered to R9-6-504; new R9-6-503 renumbered from R9-6-502 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

R9-6-504. Animal Control Agency Reporting Requirements

By April 30 of each year, an animal control agency shall submit a report to the Department that contains the number of animal bites to humans reported as occurring in the animal control agency's jurisdiction during the preceding calendar year and a breakdown of the bites by:
1. Species of animal,
2. Age of victim, and
3. Month of occurrence.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Correction, this Section shown as amended effective December 22, 1976 should read amended effective May 12, 1977 (Supp. 77-3). Amended effective April 10, 1980 (Supp. 80-2). Amended as an emergency effective August 31, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Emergency expired. Former R9-6-119 amended as a permanent rule by repealing subsections (A) and (B), renumbering and amending subsections (C) through (I) effective January 21, 1983 (Supp. 83-1). Former Section R9-6-119 renumbered without change as R9-6-504 effective January 28, 1987 (Supp. 87-1). Section R9-6-504 repealed, new Section adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-504 renumbered to R9-6-704 effective October 19, 1993 (Supp. 93-4). Section renumbered from R9-6-503 and amended by final rulemaking at 10 A.A.R. 3559, effective October 2, 2004 (Supp. 04-3).

R9-6-505. Renumbered

Historical Note

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-505 renumbered to R9-6-705 effective October 19, 1993 (Supp. 93-4).

R9-6-506. Renumbered

Historical Note

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-506 renumbered to R9-6-706 effective October 19, 1993 (Supp. 93-4).

Table 1. Renumbered

Historical Note

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-506, Table 1 renumbered to R9-6-706 Table 1 effective October 19, 1993 (Supp. 93-4).

Table 2. Renumbered

Historical Note

Adopted effective January 20, 1992 (Supp. 92-1). Former Section R9-6-506, Table 2 renumbered to R9-6-706, Table 2 effective October 19, 1993 (Supp. 93-4).

36-132. Department of health services; functions; contracts

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

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.

4. Operate sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information to promote good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of educating children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in coordinating local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

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

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

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

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

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

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

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that a licensing period shall not be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

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

The department may also expend these monies to further applicable scientific research within this state.

C. The department, 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.

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

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 department, environmental department 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 monies 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 that are 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 that are 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 meatpacking 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 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 prepared in a kitchen of a private home for commercial purposes consistent with chapter 8, article 2 of this title.

(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.

(k) Spirituous liquor produced by a producer that is licensed by the department of liquor licenses and control or spirituous liquor imported and sold by wholesalers that is licensed by the department of liquor licenses and control. This exemption includes all commercially prepackaged spirituous liquor and all spirituous liquor poured at a licensed special event, festival or fair in this state.

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 identifying, storing, handling and selling 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 submitting 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. Confidential information may not 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 and chapter 8, article 2 of this title. 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 this 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 if 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" has the same meaning prescribed in section 36-931.

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.

11-1103. Development fees; intergovernmental agreements; purposes

A county may enter into an intergovernmental agreement to accept or disburse development fees for construction of a public facility pursuant to a benefit area plan, including an agreement with a city or special taxing district for the joint establishment of a needs assessment, the adoption of a benefit area plan and the imposition, collection and disbursement of development fees to implement a joint plan for development.

DEPARTMENT OF REVENUE
Title 15, Chapter 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: January 21, 2025

SUBJECT: **ARIZONA DEPARTMENT OF REVENUE**
Title 15, Chapter 2, Department of Revenue - Income and Withholding Tax

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Summary

This Five-year Review Report (5YRR) from the Arizona Department of Revenue (Department) relates to sixty-two (62) rules in Title 15, Chapter 2, regarding Income and Withholding Tax.

The Department did not complete the proposed course of action indicated in the agency's previous 5YRR for these rules. In the previous 5YRR, the Department considered taking action on 5 rules in Chapter 2. The Department indicates in this report that it believed it did not have proper justification to seek an exemption from the rulemaking moratorium and thus did not request an exemption. In communication with Council staff, the Department has provided further clarification that updating the rules would not have any tangible benefit to justify an exemption. In the previous 5YRR, the Department indicated that they did not complete their proposed course of action for the same reasons. In the 2014 5YRR approved by the Council in March 2015, the Department identified that they did not take their previous course of action from their 2009 5YRR because of the rulemaking moratorium and for not having proper justification. In 2017 and 2018, the Department did expire rules identified in their 2014 5YRR.

While the Department did not make the proposed changes to the rules, the Department does indicate they were able to resolve the deficiencies identified in the previous 5YRR by

modifying their forms to have increased instructions on them and improved their webpage. The proposed changes from the previous 5YRR and the Department action is as follows:

- R15-2A-202:
    - Proposed Course: The Department proposed to amend the rule to provide specificity with respect to the determination of expenses related to nontaxable income and to remove a reference to a repealed statute. The Department will reach out to the Governor's Office for a possible exception to the rulemaking moratorium. If the exception is granted the Department anticipates opening the rulemaking process by June 2020.
        - Department Remedy: The Department has modified Form 120 and 140 instructions to provide more detail regarding determination of expenses related to nontaxable income.
- R15-2B-101:
    - Proposed Course: The Department proposed to amend the rule by removing subsection J of the rule which refers to the minimum withholding percentage for employees which no longer exists. The Department will reach out to the Governor's Office for a possible exception to the rulemaking moratorium. If the exception is granted the Department anticipates opening the rulemaking process by June 2020.
    - Department Remedy: The Department created a new version of withholding form with new instructions.
- R15-2C-101:
    - Proposed Curse: The Department proposed to amend the rule to provide specificity with respect to the application of a refund to the subsequent year's estimated tax, the method of determining the amount of tax considered due for purposes of this section when married taxpayers change from joint to separate filing method, and to update a statutory reference. The Department also proposes to amend the rule by adding language that estimated taxes can now be paid by credit card through www.aztaxes.gov. The Department will reach out to the Governor's Office for a possible exception to the rulemaking moratorium. If the exception is granted the Department anticipates opening the rulemaking process by June 2020.
        - Department Remedy: The Department added a new webpage with information on how to make estimated payments along with curating a new Publication.
- R15-2C-601:
    - Proposed Course: The Department proposed to amend the rule to provide specificity with respect to the calculation of Arizona income derived from a multistate business and reference the unitary business to the definition in R152D101. The Department will also amend the rule to conform to the standards of the Governor's Regulatory Review Council and remove language like "should" and "must". The Department will reach out to the Governor's Office for a possible exception to the rulemaking moratorium. If the exception is granted the Department anticipates opening the rulemaking process by June 2020.

        - Department Remedy: The Department added language to Form 120 instructions specifically for multistate corporations
- R15-2D-302
    - Proposed Course: The Department proposed to amend the rule to reflect a statutory change which now allows net operating losses created after December 31, 2011 to be carried forward for 20 years, replacing the previous 5 year carryforward limitation. The Department will also amend the rule to conform to the standards of the Governor's Regulatory Review Council and remove language like "should" and "must". The Department will reach out to the Governor's Office for a possible exception to the rulemaking moratorium. If the exception is granted the Department anticipates opening the rulemaking process by June 2020.
        - Department Remedy: The Department has updated Form 120 instructions to reflect the 20 year time period.

Proposed Action

In the current report, the Department is not proposing to make any changes because the Department has indicated that the actions taken in the past five years have remedied the deficiencies in the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

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:

According to the Department, the economic impact of the tax regulatory scheme is derived from the statutes themselves and not the rules adopted to interpret the application of a tax. It is only when a rule imposes requirements not specifically required by statue (e.g., to prepare a form, submit documentation, or maintain records) that the rule has an economic impact. The economic impact for the rules estimated minimal (less than $1,000) costs related to the public hearing and publishing of the rules.

Stakeholders include the Department and Arizona taxpayers.

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?

According to the Department, the income and withholding tax rules impose the least burden and costs to the regulated public, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the Department's review shows the income and withholding tax rules are consistent with statutes, rules and enforcement policies that result in significantly less burden on the regulated public. No written comments, complaints, or suggestions have been received from the public regarding

the existing income and withholding tax rules within the last five years.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable. However, the Department identified in their 2019 report that neither R15-2A-202 or R15-2B-101 were clear, concise, and understandable. This is detailed above in the Summary of this memo.

R15-2A-202 in subsection (A) contains a reference to A.R.S. § 43-1049, which was repealed by HB 2028 in the Third Special Session of 1990. The Department also stated they would amend the rule to improve specificity regarding the determination of expenses related to nontaxable income. The Department stated this was accomplished by improving their forms.

R15-2B-101 states that this section is not enforced because it is outdated and updated information is provided on forms provided by the Department.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates that the rules are consistent with other rules and statutes. The Department did not identify any rules in their previous report as being inconsistent with other rules and statutes. However, the Department has previously indicated that statutory changes have made certain rules obsolete as identified in both Items 5 and 7 of this Memo.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates that the rules within Chapter 2 are effective in achieving their objectives. However in the previous 5 YRR the Department indicated 4 rules were ineffective in meeting their objective. This is detailed above in the Summary of this memo. The rules in question are R15-2A-202, R15-2C-101, R15-2C-601, and R15-2D-302. The latter was identified because it did not meet statutory standards in A.R.S. § 43-1123 as a result of HB 2815 signed into law in 2012.

The former 3 rules were identified because they were not specific enough and failed to provide enough information for proper guidance. The Department has consistently been updating their webpage and forms to provide proper guidance. The Department has indicated to Department staff that the guidance provided by these forms and Department website do impose any additional requirements on stakeholders.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates that the rules are enforced as written. However, in the previous report the Department indicated that R15-2B-101(J) was not enforced as written, this is explained in the Summary and Item 7 of this memo.

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 Department indicates that the rules are not stricter than the United States internal revenue code.

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?

The Department indicates the rules do not require or relate to permits or licenses.

11. Conclusion

Council Staff has concerns regarding the Agency not completing their previous course of action. Staff encourages the Council to inquire about the Department actions detailed in page 10 and 11 of the Department's report. Specifically, staff recommends that the Council ask why there are inconsistencies between the Department's previous 5YRR and this 5YRR when the Department did not complete their previous Courses of Actions in correcting the rules, only updating the Department's forms and website. In addition, if the Department believes that this information can be provided by Form and not Rule, why has the Department not proposed repealing these rules. Lastly, if these rules are necessary, staff encourages Council to inquire about how the Department plans to accomplish rulemaking after not completing the previous course of actions identified in the last three 5YRR.

October 23, 2024

VIA EMAIL:
grrc@azdoa.gov
Chairwoman Klein
Governor's Regulatory
Review Council 100 North
15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: [Department of Revenue Title 15 Chapter 2 Income and Withholding Section Five Year Review Report]

Dear Chairwoman Klein:

Please find enclosed the Five Year Review Report of the Department of Revenue for Title 15 Chapter 2 Income and Withholding Section which is due on October 25, 2024.

The Department of Revenue hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Isaiah Costello at 614-204-938 and icostello@azdor.gov.

Sincerely,

Hsin Pai

Governor's Regulatory Review Council

FIVE-YEAR-REVIEW REPORT

Title 15 Revenue
Chapter 2 Department of Revenue
Income and Withholding Section

Due October 25, 2024
Submitted October 23, 2024

- **<u>Authorization of the rule by existing statutes</u>** General Statutory Authority:
  - A.R.S. § 42-1005(A)(1),

Specific Statutory Authority:

R15-2A-103	Time for Filing Returns A.R.S § 43-325
R15-2A-104	Returns Filed by Persons Outside the United States A.R.S § 43-328
R15-2A-202	Items not Deductible in Computing Taxable Income A.R.S § 43-961
R15-2B-101	Payment Schedule; Rates; Election by Employee A.R.S § 43-401
R15-2B-102	Employment Excluded from Withholding A.R.S § 43-403
R15-2B-201	Refund of Excess Withholding A.R.S § 43-432
R15-2C-101	Payment of Estimated Tax by Individuals A.R.S § 43-581
R15-2C-201	Additions to and Subtractions from Arizona Gross Income A.R.S. § 43-102, 43-1021,43-1022
R15-2C-211	Amounts Already Deducted A.R.S. § 43-102
R15-2C-301	Retirement Benefits, Annuities, Pensions A.R.S. § 43-1022
R15-2C-305	Social Security and Railroad Retirement Benefits A.R.S. § 43-1022
R15-2C-306	Income Previously Recognized A.R.S. § 43-102
R15-2C-307	Exemption for Blind Persons A.R.S § 43-1023
R15-2C-502	Property Tax Credit A.R.S § 43-1072
R15-2C-503	Renewable Energy Production Credit A.R.S § 43-1083.02
R15-2C-601	Income of a Non-resident A.R.S. § 43-1091
R15-2C-602	Income from Intangible Personal Property A.R.S § 43-1092
R15-2C-604	Nonresident Members of Professional Athletic Teams A.R.S. § 43-1091
R15-2C-605	Nonresident Professional Athletes Who Are Not Team Members A.R.S. § 43-1091
R15-2D-101	Definitions A.R.S § 43-1101
R15-2D-302	Corporate Net Operating Loss A.R.S § 43-1123
R15-2D-303	Domestic International Sales Corporation (DISC) A.R.S § 43-1125
R15-2D-305	Deferred Exploration Expenses A.R.S § 43-1127
R15-2D-306	Amortization of Property Used for Atmospheric and Water Pollution Control A.R.S § 43-1129
R15-2D-307	Amortization of Child Care Facilities A.R.S § 43-1130
R15-2D-401	Unitary Business and Combined Returns A.R.S § 43-942
R15-2D-403	Taxable in Another State A.R.S § 43-1133
R15-2D-404	Apportionment Formula A.R.S § 43-1139
R15-2D-405	Intercompany Eliminations A.R.S. § 43-1148
R15-2D-501	General A.R.S § 43-1131
R15-2D-502	Rents from Real and Tangible Personal Property A.R.S § 43-1135
R15-2D-503	Gains or Losses from Sales of Assets A.R.S § 43-1136

R15-2D-504	Interest A.R.S. § 43-1137
R15-2D-505	Dividends A.R.S. § 43-1137
R15-2D-506	Royalties A.R.S § 43-1138
R15-2D-507	Proration of Deductions § 43-1148
R15-2D-508	Consistency and Uniformity in Reporting A.R.S. § 43-1149
R15-2D-601	General A.R.S. § 43-1140
R15-2D-602	Property Used for the Production of Business Income A.R.S. § 43-1140
R15-2D-603	Property Factor Numerator A.R.S. § 43-1140
R15-2D-604	Valuation of Owned Property A.R.S. § 43-1141
R15-2D-605	Valuation of Rented Property A.R.S. § 43-1141
R15-2D-606	Averaging of Monthly Property Values A.R.S § 43-1142
R15-2D-607	Consistency and Uniformity in Reporting A.R.S. § 43-1149
R15-2D-701	General A.R.S. § 43-1143
R15-2D-702	Payroll Factor Denominator A.R.S. § 43-1143
R15-2D-703	Payroll Factor Numerator A.R.S. § 43-1143
R15-2D-704	Compensation Paid in this State: Definitions A.R.S § 43-1144
R15-2D-705	Consistency and Uniformity in Reporting A.R.S. § 43-1149
R15-2D-801	General A.R.S. § 43-1145
R15-2D-803	Sales Factor Numerator A.R.S. § 43-1145
R15-2D-804	Property Delivered or Shipped to a Purchaser within this State A.R.S. § 43-1146
R15-2D-805	Sales of Tangible Personal Property to the United States Government A.R.S. § 43-1146
R15-2D-806	Sales other than Sales of Tangible Personal Property in this State A.R.S § 43-1147
R15-2D-807	Consistency and Uniformity in Reporting A.R.S. § 43-1149
R15-2D-901	General A.R.S. § 43-1148
R15-2D-902	Special Provisions for the Property Factor A.R.S. § 43-1148
R15-2D-903	Special Provisions for the Sales Factor A.R.S. § 43-1148
R15-2D-1001	Environmental Technology Facility Tax Credit A.R.S § 43-1169
R15-2D-1002	Renewable Energy Production Tax Credit A.R.S § 43-1164.03
R15-2F-101	Fiduciary Returns A.R.S § 43-1361
R15-2G-101	Partnerships A.R.S § 43-1411

- **The objective of each rule:**

Rule	Objective
R15-2A-103	The first objective is to provide guidance to taxpayers with respect to the time for filing fractional year returns and returns for deceased individuals. The second objective is to prescribe when a return is considered timely filed when the return is filed pursuant to a filing extension, by mail, or when the due date falls on a weekend or holiday.
R15-2A-104	The objective of the rule is to provide guidance to taxpayers with respect to filing income tax returns when taxpayers are out of the country and it is impossible or impractical to file a timely return.
R15-2A-202	The objective of the rule is to explain which items are not deductible in computing Arizona taxable income.
R15-2B-101	The objective of the rule is to explain how to determine which withholding payment schedule to use.
R15-2B-102	The objective of the rule is to explain when employment is excluded from the withholding provisions of the statutes.
R15-2B-201	The objective of the rule is to explain the procedure to be followed by the surviving spouse or personal representative of an estate in order to obtain a refund of excess tax withheld when the taxpayer died.
R15-2C-101	The objective of the rule is to set forth how taxpayers can determine who must pay estimated tax and when the estimated payments must be made.
R15-2C-201	The objective of the rule is to give taxpayers an overview of how Arizona individual income taxes are computed.

R15-2C-211	The objective of the rule is to explain how to treat amounts previously deducted on the Arizona return when they flow through from the federal return due to timing differences.
R15-2C-301	The objective of the rule is to explain how the $2,500 subtraction for certain government pensions applies.
R15-2C-305	The objective of the rule is to clarify the treatment of social security benefits and Tier I railroad retirement benefits that are included in federal adjusted gross income.
R15-2C-306	The objective of the rule is to address the subtraction for income that was previously recognized for Arizona purposes when that income is included later in federal adjusted gross income.
R15-2C-307	The objective of the rule is to provide additional explanation for the statutory provision granting exemptions to taxpayers for those situations delineated in the title of the rule.
R15-2C-502	The objectives of this rule are to provide a definition of adjusted gross income for determining eligibility for the property tax credit, to clarify the calculation of specific income items to be included in that adjusted gross income, and to delineate the documentation required to substantiate the credit.
R15-2C-503	The objective of this rule is to delineate the documentation required in the application for claiming the renewable energy production tax credit.
R15-2C-601	The objective of this rule is to delineate and describe the types of income that a non-resident must include in determining Arizona gross income and how to determine the amount of that income.
R15-2C-602	The objective of the rule is to clarify and explain the provisions in the statute.
R15-2C-604	The objective of this rule is to delineate and describe the types of income that non-resident members of professional athletic teams must include in determining Arizona gross income and how to determine the amount of that income.
R15-2C-605	The objective of this rule is to delineate and describe the types of income that a non-resident professional athlete, who is not a member of a team, must include in determining Arizona gross income and how to determine the amount of that income.
R15-2D-101	The objective of this rule is to provide additional definitions of terms used to determine income of a multistate business.
R15-2D-302	The objective of this rule is to provide corporate taxpayers with guidance in computing the net operating loss subtraction.
R15-2D-303	The objective of the rule is to provide guidance to taxpayers regarding the income taxation of Domestic International Sales Corporations (DISC) and their shareholders

R15-2D-305	The objective of the rule is to explain how to calculate the deduction for deferred exploration expenses currently allowed by A.R.S. § 43-1127.
R15-2D-306	The objective of the rule is to provide guidance to corporate taxpayers regarding the requirements for claiming amortization of property used for atmospheric and water pollution control.
R15-2D-307	The objective of the rule is to establish the criteria for taxpayers operating child care facilities to take the amortization deduction allowed by A.R.S. § 43-1130
R15-2D-401	The objective of the rule is to provide guidance to corporate taxpayers regarding the requirements for determining whether a group of affiliated corporations is conducting a unitary business and the necessity of filing a combined return.
R15-2D-403	The objective of the rule is to clarify when a taxpayer's income is taxable in another state for purposes of requiring apportionment or allocation of income.
R15-2D-404	The objective of the rule is to clarify that business income shall be apportioned to Arizona using an apportionment formula.
R15-2D-405	The objective of the rule is to clarify the treatment of intercompany transactions of members of a consolidated or combined group.
R15-2D-501	The objective of this rule is to provide guidance in the determination of business and nonbusiness income or loss.
R15-2D-502	The objective of this rule is to provide guidance in the determination of business and nonbusiness rental income or loss.
R15-2D-503	The objective of this rule is to provide guidance in the determination of business and nonbusiness gain or loss from the sale of assets.
R15-2D-504	The objective of this rule is to provide guidance in the determination of business and nonbusiness interest income.
R15-2D-505	The objective of this rule is to provide guidance in the determination of business and nonbusiness dividend income.
R15-2D-506	The objective of this rule is to provide guidance in the determination of business and nonbusiness royalty income.

R15-2D-507	The objective of this rule is to provide for the proration of expenses among the classes of income to which they apply.
R15-2D-508	The objective of the rule is to require a taxpayer to report income and deductions in a uniform and consistent manner.
R15-2D-601	The objective of the rule is to identify general property that should or should not be included in the property factor as part of the apportionment formula.
R15-2D-602	The objective of the rule is to identify specific property that should or should not be included in the property factor as part of the apportionment formula.
R15-2D-603	The objective of the rule is to identify the property that should be included in the Arizona numerator of the property factor as part of the apportionment formula.
R15-2D-604	The objective of the rule is to explain how property is to be valued for purposes of the property factor.
R15-2D-605	The objective of the rule is to explain how rented property is to be valued for purposes of the property factor.
R15-2D-606	The objective of the rule is to explain how to determine the average value of property for purposes of the property factor.
R15-2D-607	The objective of the rule is to require a taxpayer to compute the property factor in a uniform and consistent manner.
R15-2D-701	The objective of the rule is to identify compensation that should or should not be included in the payroll factor as part of the apportionment formula.
R15-2D-702	The objective of the rule is to identify compensation that should or should not be included in the denominator of the payroll factor as part of the apportionment formula.
R15-2D-703	The objective of the rule is to identify the compensation that should be included in the Arizona numerator of the payroll factor as part of the apportionment formula.
R15-2D-704	The objective of the rule is to define terms used to determine whether compensation is paid in this state for purposes of the payroll factor.
R15-2D-705	The objective of the rule is to require a taxpayer to compute the payroll factor in a uniform and consistent manner.
R15-2D-801	The objective of the rule is to identify sales that should or should not be included in the sales factor as part of the apportionment formula.

R15-2D-803	The objective of the rule is to identify sales that should be included in the numerator of the sales factor as part of the apportionment formula.
R15-2D-804	The objective of the rule is to identify property that is considered to be delivered or shipped to a purchaser in the state.
R15-2D-805	The objective of the rule is to identify sales that are considered to be sales to the United States government.
R15-2D-806	The objective of the rule is to identify sales that should be included in the numerator of the sales factor as part of the apportionment formula when the sales are other than sales of tangible personal property.
R15-2D-807	The objective of the rule is to require a taxpayer to compute the sales factor in a uniform and consistent manner.
R15-2D-901	The objective of the rule is to provide for alternate apportionment provisions when the standard provisions cannot be reasonably applied.
R15-2D-902	The objective of the rule is to provide alternate property factor provisions when the standard apportionment provisions cannot be reasonably applied.
R15-2D-903	The objective of the rule is to provide alternate sales factor provisions when the standard apportionment provisions cannot be reasonably applied.
R15-2D-1001	The objective of this rule is to provide record keeping requirements for documents and records necessary to substantiate the credit.
R15-2D-1002	The objective of this rule is to delineate the documentation required in the application for claiming the renewable energy production tax credit.
R15-2F-101	The objective of the rule is to state the requirement that a fiduciary file an information return.
R15-2G-101	The objective of the rule is to state the requirement that a partnership file an information return.

3.Are the rules effective in achieving their objectives? **Yes** **__X_**
No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

- **Are the rules consistent with other rules and statutes?** **Yes** **_X__**
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.

- **Are the rules enforced as written?** **Yes**
_X__ **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.

- **Are the rules clear, concise, and understandable?** **Yes**
_X__ **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.

- **Has the agency received written criticisms of the rules within the last five years?** **Yes __ No_ X**

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

- **Economic, small business, and consumer impact comparison:**

The economic impact of the tax regulatory scheme is derived from the statutes themselves and not the rules adopted to interpret the application of a tax. It is only when a rule imposes requirements not specifically required by statute (e.g., to prepare a form, submit documentation, or maintain records) that the rule has an economic impact.

The economic impact for the rules estimated minimal costs related to the public hearing and publishing the rules. "Minimal" is defined as an impact of less than $1,000 in costs or benefits.

- **Has the agency received any business competitiveness analyses of the rules? Yes ___ No X**

  No analysis regarding the income and withholding tax rules impacts on business competitiveness in this state compared with the impact on businesses in other states has been submitted to the Department within the last five years.

- **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 previous five year review the Department considered proposed action for five different rules. Due to the rules moratorium those anticipated amendments were not made. The Department did not seek an exception to the rules moratorium because it did not have proper justification to do so under the current or previous Executive Orders.

  For each of the five identified rules the Department has taken the following actions to remedy any deficiencies in the rules:

  R15-2A-202: The Department has modified the Form 120 and Form 140 instructions to provide more detailed information regarding the determination of expenses related to nontaxable income**.**

  R15-2B-101: The Department has created a new version of the withholding form, A-4, and instructions that reflect the current withholding rates.

  R15-2C-101: The Department has added a new webpage with comprehensive

information on how to make estimated payments. The Department has also created and curated Publication 12 with additional information on estimated payments.

R15-2C-601: The Department has added substantial language to the Form 120 instructions specifically applying to multistate corporations and the apportionment of income.

R15-2D-302: The Department has updated the Form 120 instructions to reflect the current 20 year NOL carry forward period.

- **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 income and withholding tax rules impose the least burden and costs to the regulated public, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective because the Department's review shows the income and withholding tax rules are consistent with statutes, rules and enforcement policies that results in significantly less burden on the regulated public. No written comments, complaints, or suggestions have been received from the public regarding the existing income and withholding tax rules within the last five years.

- **Are the rules more stringent than corresponding federal laws? Yes ___ No X**

  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 Department has determined after analysis that the income and withholding tax rules are not more stringent than the United States internal revenue code of 1986, as amended and in effect on January 1, 2024 unless there is statutory authority to exceed the requirements of that federal law.

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- **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:**

  No income or withholding tax rules were adopted after July 29, 2010 which require the issuance of a regulatory permit, license or agency authorization.

- **Proposed course of action**

  If possible, please identify a month and year by which the agency plans to complete the course of action.

  At this time the Department does not intend to take any action in regards to the above rules. We feel the remedies that we have implemented for the five rules identified in the previous five year review are sufficient and have proven successful. In the future if the rules moratorium is lifted the Department may revisit these rules to determine if changes are necessary.

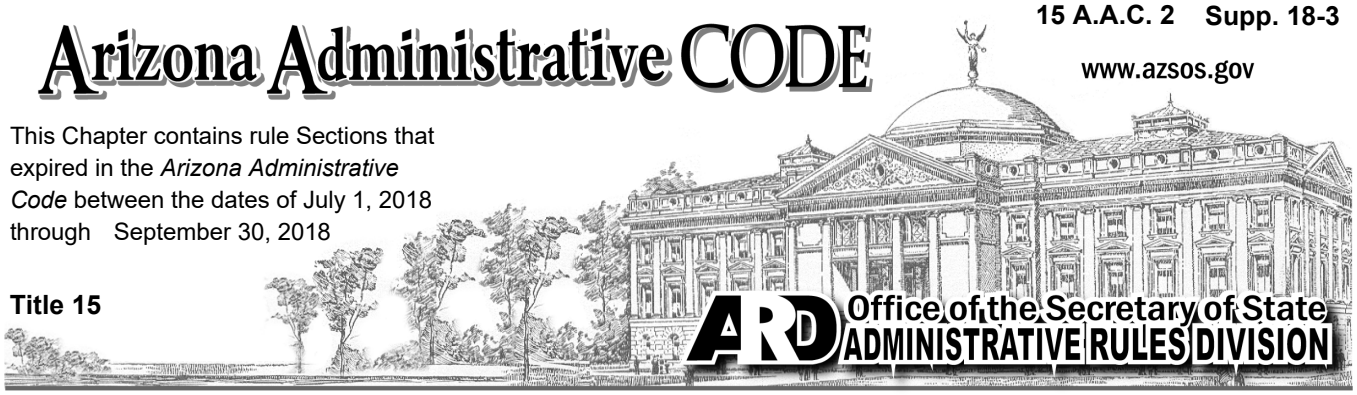
15 A.A.C. 2 Supp. 18-3

www.azsos.gov

Arizona Administrative CODE

This Chapter contains rule Sections that expired in the *Arizona Administrative Code* between the dates of July 1, 2018 through September 30, 2018

Title 15



TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE - INCOME AND WITHHOLDING TAX SECTION

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.

SUBCHAPTER E. EXPIRED

ARTICLE 1. EXPIRED

ARTICLE 2. EXPIRED

ARTICLE 3. EXPIRED

Questions about the expired rules? Contact:

Council:	The Governor's Regulatory Review Council
Name:	GRRC
Address:	100 N. 15th Ave #305 Phoenix, AZ 85007
Telephone:	(602) 542-2058

The release of this Chapter in Supp. 18-3 replaces Supp. 17-4, 34 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

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 2018 is cited as Supp. 18-1.

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. 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, 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

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, managing rules 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 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE - INCOME AND WITHHOLDING TAX SECTION

(Authority: A.R.S. § 43-101 et seq.)

Editor's Note: The Department of Revenue recodified this Chapter at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000. The rescinded Chapter, which contains the former codification and Historical Notes, is on file in the Office of the Secretary of State (Supp. 00-2).

Chapter 2 consisting of Articles 1 through 14 adopted effective December 22, 1981.

Former Chapter 2 consisting of Article 1 repealed effective December 22, 1981.

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 2. GENERAL ACCOUNTING PROVISIONS

SUBCHAPTER B. WITHHOLDING

ARTICLE 1. WITHHOLDING BY EMPLOYER

ARTICLE 2. WITHHOLDING AS PAYMENT OF TAX FOR EMPLOYEE

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ARTICLE 4. EXPIRED

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ARTICLE 6. NONRESIDENTS

ARTICLE 7. REPEALED

Article 7, consisting of Sections R15-2C-701 through R15-2C-705 repealed by exempt rulemaking at 14 A.A.R. 4249, effective October 24, 2008 (Supp. 08-4).

SUBCHAPTER D. CORPORATIONS

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ARTICLE 2. ADDITIONS TO ARIZONA GROSS INCOME

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ARTICLE 4. MULTISTATE DIVISION OF INCOME

ARTICLE 5. BUSINESS AND NONBUSINESS INCOME

ARTICLE 6. PROPERTY FACTOR

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ARTICLE 8. SALES FACTOR

ARTICLE 9. DEPARTURE FROM STANDARD APPORTIONMENT AND ALLOCATION PROVISIONS

ARTICLE 10. CREDITS

Article 10, consisting of Section R15-2D-1001, adopted by final rulemaking at 6 A.A.R. 4105, effective October 4, 2000 (Supp. 00-4).

ARTICLE 11. REPEALED

Article 11, consisting of Sections R15-2D-1101 through R7-2D-1105 repealed by exempt rulemaking at 14 A.A.R. 4253, effective October 24, 2008 (Supp. 08-4).

SUBCHAPTER E. EXPIRED

ARTICLE 1. EXPIRED

ARTICLE 2. EXPIRED

ARTICLE 3. EXPIRED

CHAPTER 2. DEPARTMENT OF REVENUE - INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER F. ESTATES AND TRUSTS

ARTICLE 1. RETURNS

ARTICLE 2. IMPOSITION OF TAX ON ESTATES AND TRUSTS

SUBCHAPTER G. PARTNERSHIPS

ARTICLE 1. TAXATION OF PARTNERSHIPS

CHAPTER 2. DEPARTMENT OF REVENUE - INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R15-2A-101. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 653, effective January 11, 2001 (Supp. 01-1).

R15-2A-102. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2885, effective June 13, 2001 (Supp. 01-2).

R15-2A-103. Time for Filing Returns

A. Generally, a taxpayer shall file an income tax return on or before the 15th day of the fourth full calendar month following the close of the taxable year. This requirement is subject to the following exceptions:
1. The final income tax return of a decedent shall be filed on or before the 15th day of the fourth month following the close of the 12-month period that began with the first day of the taxable year in which the decedent died.
2. The Department may prescribe a later time for filing a return for a fractional part of a year upon a showing by the taxpayer of unusual circumstances.
3. A corporation liquidating all its assets and ceasing operations during any taxable year may file a return with the Department for that year immediately after liquidation and shall report the income of the corporation for the part of the year during which the corporation was engaged in business.
4. Under A.R.S. § 43-1126, a corporation taxable as an S corporation under the Internal Revenue Code shall file its income tax return with the Department on or before the 15th day of the third month following the close of the taxable year.
5. Under A.R.S. § 43-1241, an organization, otherwise exempt under A.R.S. § 43-1201, having unrelated business income shall file its income tax return with the Department on or before the 15th day of the fifth month following the close of the taxable year.

B. The due date for filing an income tax return with the Department is the date on or before which a return is required to be filed under A.R.S. Title 43 or the last day of the period covered by a filing extension granted by the Department. When the due date falls on Saturday, Sunday, or a legal holiday, the due date for filing the income tax return with the Department is the business day following the Saturday, Sunday, or legal holiday.

C. An income tax return that is placed in the United States mail, properly addressed with postage paid, is deemed filed on the date of the postmark stamped on the envelope. For purposes of this subsection, the terms "United States mail" and "postmark" have the meaning in A.R.S. § 1-218(E).

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2885, effective June 13, 2001 (Supp. 01-2).

R15-2A-104. Returns Filed by Persons Outside the United States

A. If a taxpayer is outside the United States and is unable to file an Arizona individual income tax return or perform any act required by A.R.S. Title 43, the taxpayer may request that the Department disregard the period in which the taxpayer was unable to comply by filing a written request with the Department within 30 days after returning to the United States that:
1. Explains the reasons why the taxpayer was unable to file the income tax return or perform the required act,
2. Indicates the time period in which the taxpayer was unable to file the income tax return or perform the required act, and
3. Includes the income tax return and any applicable tax payment.

B. The taxpayer shall mail the request required under subsection (A) to the Arizona Department of Revenue, Out-of-Country Waiver, 1600 West Monroe, Phoenix, Arizona 85007.

C. The Department may extend the request period under subsection (A) if circumstances exist that prevent the taxpayer from filing the request within the 30-day period.

D. A taxpayer may request an extension to file the income tax return required in subsection (A)(3) if:
1. The other requirements in subsection (A), including payment of the estimated tax due, are met, and
2. The taxpayer provides documentation of the taxpayer's inability to file the income tax return by the 30-day requirement.

E. If the Department determines that it was impossible or impracticable for the taxpayer to timely file an income tax return or perform the required act, the Department shall relieve the taxpayer from the interest and penalties accruing from the failure to file a timely return or perform the required act.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2885, effective June 13, 2001 (Supp. 01-2).

ARTICLE 2. GENERAL ACCOUNTING PROVISIONS

R15-2A-201. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Repealed by final rulemaking at 7 A.A.R. 2885, effective June 13, 2001 (Due to clerical error Section not shown as repealed until Supp. 08-4).

R15-2A-202. Items not Deductible in Computing Taxable Income

A. Personal and family expenses. Insurance paid on a dwelling owned and occupied by a taxpayer is a personal expense and not deductible. Premiums paid for life insurance by the insured are not deductible. In the case of a professional man who rents a property for residential purposes but incidentally receives clients, patients, or caller there in connection with his professional work (his place of business being elsewhere), no part of the rent is deductible as a business expense. However, if he uses part of the house for his office, such portion of the rent as is properly attributable to such office is deductible. If the father is entitled to the services of his minor children, any allowances that he gives them whether said to be in consideration of services or otherwise are not allowable deductions in his return of income. Generally, attorneys' fees paid in a suit for divorce or separate maintenance are not deductible. However, the part of an attorney's fee paid in a divorce or separate

maintenance proceeding that is properly attributable to the production or collection of amounts of includible in gross income is deductible. Amounts paid as alimony or allowance for support on divorce or separation are not deductible except as otherwise provided. The cost of equipment of an Army officer to the extent only that it is especially required by his profession and does not merely take the place of articles required in civilian life is deductible. Accordingly, the cost of a sword is an allowable deduction, but the cost of a uniform is not. See Section 43-1049 for deduction of extraordinary medical expenses including amounts paid for accident or health insurance.

B. Amounts allocable to non-includible income

1. Class of non-includible income
   a. This Section applies to income that is not required to be included in Arizona adjusted gross income or Arizona taxable income. Examples of such non-includible income would be interest exempt from the Arizona income tax by the Constitution or federal or state law, or the income of a corporation which was derived from sources outside this state. The fact that a person's otherwise taxable income may be reduced by allowable deductions and personal exemptions will not render such income subject to this provision.
   b. The object is to segregate non-includible income from the taxable income in order that a double exemption may not be obtained through the reduction of taxable income by expenses and other items incurred in the production of items of non-includible income. Accordingly, just as certain items of income are excluded from the computation of Arizona gross income and Arizona taxable income by Sections 43-1022 and 43-1122, Section 43-961 excludes from the computation of deductions all items referable to the production of non-includible income as above defined.
2. Determination of amounts allocable to a class of exempt income
   a. No deduction may be allowed for the amount of any item or part thereof allocable to a class or classes of exempt income, or other income not includible in Arizona adjusted gross income or Arizona taxable income.

      Example: Expenses paid or incurred for the production or collection of income that is wholly exempt from income taxes such as interest or dividends of a type not includible in gross income are not deductible expenses. Items or parts of such items directly attributable to any class or classes of exempt income shall be allocated to that, and items or parts of such items directly attributable to any class or classes of taxable income shall not be allocated to that.
   b. If an item is indirectly attributable both to taxable income and to non-includible income, a reasonable proportion of it determined in the light of the facts and circumstances in each case shall be allocated to each. Apportionments must in all cases be reasonable.
3. Statement of items of non-includible incomes-records
   a. A taxpayer receiving any class of non-includible income or holding any property or engaging in any activity the income from which is non-includible shall submit with his return as a part of it an itemized statement in detail showing:
      i. the amount of each class of such non-includible income and
      ii. the amount of items or parts of items allocated to each such class (the amount allocated by apportionment being shown separately) as required by subsection (B)(2) of this subsection.
   b. If an item is apportioned between a class of non-includible income and a class of taxable income, the statement shall show the basis of the apportionment. Such statement shall also recite that each deduction claimed in the return is not in any way referable to non-includible income.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

SUBCHAPTER B. WITHHOLDING

ARTICLE 1. WITHHOLDING BY EMPLOYER

R15-2B-101. Payment Schedule; Rates; Election by Employee

A. An employer shall determine its Arizona withholding payment schedule for each calendar quarter by calculating the average amount of Arizona income taxes withheld in the 4 preceding calendar quarters. The employer shall calculate this average at the beginning of each calendar quarter by adding the actual amount withheld in each of the 4 preceding calendar quarters and then dividing that sum by 4.

1. If the average amount of Arizona income taxes withheld in the 4 preceding calendar quarters does not exceed $1,500, the employer shall make its Arizona withholding payments on a quarterly basis.
   Example:
   An employer determines its Arizona withholding payment schedule for the 4th calendar quarter of 1999 as follows:

3rd quarter of 1999 withholding	$1,100
2nd quarter of 1999 withholding	$1,600
1st quarter of 1999 withholding	$1,000
4th quarter of 1998 withholding	$1,200
Total withholding	$4,900
Divide by	4
Average withholding	$1,225

   The 4 quarter average of Arizona income taxes withheld does not exceed $1,500. Therefore, the employer shall make its Arizona withholding payments on a quarterly basis.
2. If the average amount of Arizona income taxes withheld in the 4 preceding calendar quarters exceeds $1,500, the employer shall make its Arizona withholding payments at the same time as the employer is required to make its federal withholding deposits.
   Example:
   An employer determines its Arizona withholding payment schedule for the 3rd calendar quarter of 1999 as follows:

2nd quarter of 1999 withholding	$1,800
1st quarter of 1999 withholding	$1,400
4th quarter of 1998 withholding	$1,900
3rd quarter of 1998 withholding	$1,300
Total withholding	$6,400
Divide by	4
Average withholding	$1,600

The 4 quarter average of Arizona income taxes withheld exceeds $1,500. Therefore, the employer shall make its Arizona withholding payments at the same time as its federal withholding deposits.

B. An employer that purchases an existing business shall determine its Arizona withholding payment schedule for each calendar quarter by calculating the average amount withheld in the 4 preceding calendar quarters as follows:

1. For the 1st quarter of withholding, the employer shall calculate the previous owner's average amount of Arizona income taxes withheld in the 4 preceding calendar quarters.
2. For the 2nd through 4th quarters of withholding, the employer shall calculate the average amount withheld in the 4 preceding calendar quarters by combining its prior quarters of withholding with the previous owner's quarters of withholding.
3. For subsequent quarters of withholding, the employer shall add the amounts it withheld in the 4 preceding calendar quarters and then divide that sum by 4.

C. A newly formed business shall determine its Arizona withholding payment schedule as follows:

1. For the 1st quarter of withholding, the employer shall make its Arizona withholding payments on a quarterly basis.
2. For the 2nd quarter of withholding, the employer shall determine its Arizona withholding payment schedule based on the amount withheld in the 1st quarter of withholding.
3. For the 3rd quarter of withholding, the employer shall determine its Arizona withholding payment schedule by adding the amounts withheld in the 1st and 2nd quarters and dividing by 2.
4. For the 4th quarter of withholding, the employer shall determine its Arizona withholding payment schedule by adding the amounts withheld in the 1st, 2nd, and 3rd quarters and dividing by 3.
5. For subsequent quarters of withholding, the employer shall determine its Arizona withholding payment schedule by adding the amounts withheld in the 4 preceding calendar quarters and dividing by 4.

D. If 2 or more employers consolidate their business activities to form 1 entity, the new employer shall determine its Arizona withholding payment schedule based on the combined withholding of the prior employers for the preceding 4 calendar quarters. Any prior employer with fewer than 4 full quarters of withholding activity shall annualize the amounts withheld and divide by 4. The new employer shall determine its Arizona withholding payment schedule by combining this amount with the quarterly averages of the other prior employers with 4 full quarters of withholding activity.

E. The employer shall complete the quarterly reconciliation required by A.R.S. § 43-401 by filing the quarterly tax return prescribed by the Department.

F. For calendar years beginning after December 31, 1997, an employer may make its Arizona withholding payments on an annual basis if all of the following conditions are met:

1. The employer has established a history of withholding activity by filing the quarterly tax return required by subsection (E) for at least the 4 preceding calendar quarters.
2. The employer's withholding liability was an amount greater than zero for at least 1 of the 4 preceding calendar quarters.
3. The average amount of Arizona income taxes withheld by the employer in the 4 preceding calendar quarters does not exceed $200. The employer will meet this average withholding requirement if the total amount withheld in the 4 preceding calendar quarters is $800 or less.
4. The employer has timely filed the quarterly tax return and has timely made its Arizona withholding payments for at least 3 of the 4 preceding calendar quarters.
5. The employer has filed the quarterly tax return for all preceding calendar quarters and does not have a balance due (tax, penalty, or interest) for any preceding calendar quarter.
6. The employer has filed the annual reconciliation tax return required by A.R.S. § 43-412 for all preceding calendar years and has timely filed the annual reconciliation tax return for the preceding calendar year.

G. An employer that makes its Arizona withholding payments on a annual basis under subsection (F), shall file the annual tax return required by A.R.S. § 43-401 on the form prescribed by the Department. The form shall contain all the information required by A.R.S. § 43-412. The employer shall make its annual Arizona withholding payment by February 28 of the year following the year for which the report was made.

H. An employer that makes its Arizona withholding payments on an annual basis under subsection (F), may continue to make its Arizona withholding payments on an annual basis for the succeeding calendar year if both of the following conditions are met:

1. The average amount of Arizona income taxes withheld by the employer in the 4 preceding calendar quarters does not exceed $200.

   Example 1:

   An employer determines whether the average amount of Arizona income taxes withheld in the 4 preceding calendar quarters does not exceed $200 as follows:

4th quarter of 1999 withholding	$200
3rd quarter of 1999 withholding	$200
2nd quarter of 1999 withholding	$250
1st quarter of 1999 withholding	$150
Total withholding	$800
Divide by	4
Average withholding	$200

   The average amount of Arizona income taxes withheld in the 4 preceding calendar quarters does not exceed $200. Therefore, the employer may make its Arizona withholding payments on an annual basis for the succeeding calendar year, if the employer also meets the condition stated in subsection (H)(2).

   Example 2:

   An employer determines whether the average amount of Arizona income taxes withheld in the 4 preceding calendar quarters does not exceed $200 as follows:

4th quarter of 1999 withholding	$200
3rd quarter of 1999 withholding	$400
2nd quarter of 1999 withholding	$250
1st quarter of 1999 withholding	$150
Total withholding	$1,000
Divide by	4
Average withholding	$250

   The average amount of Arizona income taxes withheld in the 4 preceding calendar quarters exceeds $200. Therefore, the employer may not make its Arizona withholding payments on an annual basis for the succeeding calendar year.
2. The employer has timely filed the annual tax return and has timely made its annual Arizona withholding payment as prescribed by subsection (G) for the preceding calendar year.

I. If the employer does not meet the conditions prescribed by subsection (H):
1. The employer shall determine its Arizona withholding payment schedule for succeeding calendar quarters as prescribed by subsection (A); and
2. The employer shall file the quarterly tax return for succeeding calendar quarters as prescribed by subsection (E).

J. An employer shall determine the applicable rate of withholding for each employee as follows:
1. If an employee whose annual compensation is less than $15,000 elects the minimum withholding rate, that rate shall apply until 1 of the following situations occurs:
   a. Until the employee has 12 full months of work history with the employer, the employer shall determine the employee's annualized compensation at the end of each month. The employer may use any method of annualization that accurately reflects the employee's annual compensation. If the employer determines that the employee's annualized compensation is $15,000 or more, the employer shall adjust the employee's rate of withholding beginning the next full pay period following the determination. The employer shall adjust the rate to the minimum rate prescribed by A.R.S. § 43-401, unless the employee elects a higher prescribed rate of withholding for the employee's annual compensation. The employer shall apply the minimum rate of withholding until the employee has been employed for 12 full months, unless the employee elects a higher prescribed rate of withholding for the employee's annual compensation. After 12 full months of employment, the employer shall determine the rate under subsection (J)(1)(b);
   b. If the employee has 12 full months of work history with the employer, the employer shall determine the employee's total compensation for the 12-month period. If the records for that period show that the employee earned $15,000 or more, the employer shall adjust the rate of withholding beginning the next full pay period following the determination. The employer shall adjust the rate to the minimum rate prescribed by A.R.S. § 43-401, unless the employee elects a higher prescribed rate of withholding for the employee's annual compensation. The employer shall apply this rate of withholding through the end of the calendar year, unless the employee elects a higher prescribed rate of withholding for the employee's annual compensation. At the end of that calendar year and at the end of each succeeding calendar year, the employer shall redetermine the employee's total annual compensation. If the employee's annual compensation for the preceding year changes the employee's rate of withholding, the rate change shall begin the next full pay period following the determination; or
   c. If the employee receives a salary increase that makes the employee's annualized compensation $15,000 or more, the employer shall adjust the employe's rate of withholding to the minimum rate prescribed by A.R.S. § 43-401, beginning the next full pay period following the receipt of the increase by the employee.
2. An employee who has elected a withholding rate higher than the minimum prescribed withholding rate may later elect to reduce the rate to a lower prescribed rate for the employee's annual compensation.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

R15-2B-102. Employment Excluded from Withholding

A. An employer shall not withhold Arizona income taxes from:
1. Wages paid to an employee of a common carrier when that employee is a nonresident of Arizona and regularly performs services inside and outside the state.
2. Wages paid for domestic service in a private home. Generally, service of a household nature in or about a private home includes services rendered by cooks, maids, butlers, valets, housekeepers, gardeners, caretakers, companions, child-care providers (baby-sitter, governess, nanny), grooms, and chauffeurs of automobiles for family use. If the home is used primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home. The compensation paid for the services listed above is not exempt from withholding if performed in or about rooming or lodging houses, boarding houses, clubs, hotels, motels, bed-and-breakfasts, hospitals, charitable institutions, or commercial offices or establishments. Services that are not ordinarily part of household duties and that involve the use of skilled or specialized training are not domestic services. Compensation paid for services performed as a private secretary even though performed in the employer's home is not exempt from withholding.
3. Wages paid by employers for casual labor not in the course of the employer's trade or business. "Casual labor not in the course of the employer's trade or business" means services that do not promote or advance the trade or business of the employer. The term does not include services performed for a corporation. For example, casual labor includes the labor performed by a carpenter employed by an individual to do incidental work on the individual's house. If that individual employed a carpenter to do incidental work in a factory operated by the individual, the work would be in the course of the individual's trade or business. The compensation paid for that labor is not exempt from withholding. Seasonal employment of sales clerks during any peak sales periods of a business is subject to withholding.
4. Wages paid for part-time or seasonal agricultural labor. Wages paid to part-time or seasonal employees whose services to the employer consist solely of labor in connection with the planting, cultivating, harvesting, or field packing of seasonal agricultural crops are not subject to withholding. Wages paid to employees whose principal duties are to operate any mechanically driven device in these agricultural operations are subject to withholding. An employee is part-time or seasonal agricultural employee if:
   a. The employer hires the employee to help in 1 of the steps in the development of a seasonal agricultural crop;
   b. The employee does not perform any other services for the same employer; and
   c. The employee understands, at the date of employment, that the employee's job will end on or before the completion of that step.

B. Wages paid to a nonresident of Arizona engaged in any phase of motion picture production are not subject to withholding if the employee qualifies for a credit for taxes paid to the

employee's state of residency or domicile. Before payment of the wages is due, the employer shall apply for an exemption by having the employee complete the withholding exemption certificate prescribed by the Department. The employer shall submit the completed certificate for each employee with the next quarterly return required by R15-2B-101(E).

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Correction to manifest typographical error, under subsection R15-2B-102(A)(2), "used" corrected to "use' as adopted at 5 A.A.R. 3766 (Supp. 08-4).

ARTICLE 2. WITHHOLDING AS PAYMENT OF TAX FOR EMPLOYEE

R15-2B-201. Refund of Excess Withholding
If a refund for an overpayment of income tax withheld is payable to a deceased taxpayer, the surviving spouse or other claimant shall attach the form prescribed by the Department to the deceased taxpayer's income tax return to establish the claimant's right to the refund.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

SUBCHAPTER C. INDIVIDUALS

ARTICLE 1. PAYMENT AND COLLECTION OF TAX

R15-2C-101. Payment of Estimated Income Tax by Individuals

A. Individual taxpayers subject to Arizona income tax who reasonably expect to have Arizona gross income of more than $75,000.00 in the current tax year or had Arizona gross income of more than $75,000.00 in the preceding tax year are subject to the provisions in this rule. For tax years ending on or before 12/31/92, the requirement to make estimated payments is based on Arizona gross income of more than $100,000.00.
1. The requirement to make estimated tax payments is based on the Arizona gross income of each individual taxpayer.
2. All taxpayers, whether classified as a nonresident or a resident, shall be subject to the estimated payment requirements.
3. Nonresidents shall use the definition of Arizona gross income pursuant to A.R.S. § 43-1091 for purposes of determining if estimated tax payments are required.
4. Individual taxpayers, moving into or out of Arizona during a tax year resulting in a change of residency status, shall use the definition of Arizona gross income in A.R.S. § 43-1001, allocated pursuant to A.R.S. § 43-1097, for purposes of determining if estimated tax payments are required for the portion of the year in which they are Arizona residents.

B. In projecting current Arizona gross income, the taxpayer shall use ordinary business care and prudence in determining if Arizona estimated tax payments are required.
1. The reasonableness of the projection of Arizona gross income shall depend on the facts of each case and the burden of proof rests on the taxpayer to substantiate that penalty and interest shall not be imposed for non-payment, late payment, or underpayment of estimated tax.
2. The taxpayer may request a waiver from the requirement to make estimated payments for 1 or more payment periods in the current year by attaching a written statement to the individual's income tax return for that year.
   a. The waiver is available only if the individual taxpayer did not have Arizona gross income over $75,000.00 in the preceding tax year and cannot reasonably project that Arizona gross income for the current year exceeds $75,000.00. ($100,000.00 for tax years ending on or before 12/31/92).
   b. The statement shall include the reason why Arizona gross income could not have reasonably been projected for 1 or more payment periods during the current tax year.

C. Other than as provided in subsection (D), Arizona estimated tax payments shall be paid in 4 equal installments on or before due dates established by the Internal Revenue Code.
1. For purposes of this rule, Arizona withholding shall be considered an estimated payment which is paid equally on each due date, unless the taxpayer establishes otherwise.
2. The sum of Arizona estimated tax payments, when combined with the taxpayer's Arizona withholding for the current year, shall equal the lesser of:
   a. At least 90% of the Arizona tax liability for the current year; or
   b. 100% of the Arizona tax liability, as shown on the personal income tax return for the preceding taxable year. This clause shall apply only if the individual is required to file and does file an Arizona personal income tax return for the preceding taxable year pursuant to the provisions under A.R.S. § 43-301.

D. Those taxpayers qualifying under the following circumstances may make Arizona estimated tax payments in other than 4 equal installments.
1. There shall be no requirement to make the 4th estimated tax payment if the taxpayer files an Arizona tax return, covering a calendar year, on or before January 31 of the year following the tax year or, for a fiscal year taxpayer, on or before the last day of the month following the close of the fiscal year, and the taxpayer pays in full the amount stated on the return as payable.
2. An individual who reports as a farmer or fisherman on the federal income tax return is only required to make 1 installment for a taxable year. The due date for such installment shall be January 15th of the year following a calendar tax year or the 15th day of the 1st month after the end of a fiscal year. There shall be no requirement to make this payment if, on or before March 1 of the year following a calendar tax year or on or before the 1st day of the 3rd month after the end of a fiscal year, the taxpayer files an Arizona income tax return for the tax year and pays in full the amount stated on the return as payable.
3. An individual who elects to be treated as a nonresident alien on the federal income tax return may make 3 estimated payments.
   a. Payment shall be made on or before due dates established by the Internal Revenue Code.
   b. The amount of the 1st required payment shall be 50% of the total estimated tax liability for the tax year. The 2nd and 3rd payments shall each be 25% of the total estimated tax liability.
4. A taxpayer may be able to reduce the amount of 1 or more required installments if income is not received evenly throughout the tax year. A taxpayer who uses the annualization method for determining the amount of the required installments on the federal individual income tax return may also use the annualization method on the Arizona personal income tax return. A taxpayer electing to use the annualization method for Arizona purposes shall use the method as delineated on the Arizona return and in the accompanying instructions. If the taxpayer elects to

use the annualization method for 1 due date in a tax year, the taxpayer shall use that method for all due dates for that tax year.

5. A taxpayer, due to the provisions in subsection (B) of this rule, may not be required to make 4 equal payments of estimated tax. Such a taxpayer shall be liable for the payment of estimated tax beginning no later than the 1st due date after the taxpayer establishes that the Arizona gross income requirement is applicable.
   a. If the taxpayer is 1st liable for the payment of estimated tax beginning in the 2nd payment period, such payment shall equal 50% of the total liability for the current tax year. If the liability occurs in the 3rd payment period, such payment shall equal 75% of the total liability for the current tax year. Subsequent payments shall equal 25% each.
   b. The total of these payments shall equal the amount pursuant to subsection (C) of this rule.

E. Effective 7/17/93, a penalty shall be assessed on the underpayment amount for each payment period pursuant to A.R.S. § 42-136(O). The underpayment amount is the difference between the estimated payment required to be made and the estimated payment actually paid. Penalty and interest shall be assessed for each underpayment amount for the number of days that amount remains unpaid.

1. For the purpose of computing penalty and interest, a payment shall be applied to the quarter designated by the taxpayer regardless of any outstanding underpayment balance on an earlier installment. Any overpayment of the quarterly amount shall be applied to outstanding estimated payment balances, beginning with the oldest outstanding balance, unless otherwise designated by the taxpayer.
2. Penalty and interest, on late payment, non-payment or underpayment amounts of estimated tax, shall stop accruing at the earlier of the date of payment of the underpaid amount or of the original due date of the income tax return for the tax year in which the estimated payment is required.

F. Payments of estimated tax shall be made by check, cashier's check, certified check, money order, U.S. currency, or by the application of an overpayment from a prior tax return.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

ARTICLE 2. ADDITIONS TO ARIZONA GROSS INCOME

R15-2C-201. Additions to and Subtractions from Arizona Gross Income

The starting point in calculating Arizona adjusted gross income is federal adjusted gross income calculated under the Internal Revenue Code. The taxpayer shall make additions to or subtractions from Arizona gross income under A.R.S. §§ 43-1021 and 43-1022 to calculate Arizona adjusted gross income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section heading corrected at request of the Department, Office File No. M12-227, filed June 6, 2012 (Supp. 12-1).

R15-2C-202. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 465, effective October 28, 2014 (Supp. 15-1).

R15-2C-203. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 5220, effective October 31, 2004 (Supp. 04-4).

R15-2C-204. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 465, effective October 28, 2014 (Supp. 15-1).

R15-2C-205. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 5220, effective October 31, 2004 (Supp. 04-4).

R15-2C-206. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1044, effective April 11, 2017 (Supp. 17-2).

R15-2C-207. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1044, effective April 11, 2017 (Supp. 17-2).

R15-2C-208. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-209. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-210. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1044, effective April 11, 2017 (Supp. 17-2).

R15-2C-211. Amounts Already Deducted
A taxpayer shall not deduct the same expense twice in computing Arizona taxable income.

1. If a taxpayer includes an expense item in determining the current year's federal adjusted gross income or federal taxable income for the taxable year, the taxpayer shall not include that expense item a second time in determining Arizona taxable income for the same taxable year.
2. If a taxpayer deducted an expense item in an Arizona individual income tax return and deducts the expense item again in a subsequent return in computing either federal adjusted gross income or Arizona taxable income, the taxpayer shall add back the expense item to determine Arizona adjusted gross income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

ARTICLE 3. SUBTRACTIONS FROM ARIZONA GROSS INCOME

R15-2C-301. Retirement Benefits, Annuities, Pensions
An individual is allowed to subtract up to $2,500.00 per taxable year from Arizona gross income for income received from sources as delineated in A.R.S. § 43-1022(2)(a) and (b).

1. An individual receiving income from more than 1 such source shall only subtract a total of $2,500.00 for all such income received during the taxable year.
2. The amount allowed as a subtraction is calculated per individual. The allowable subtraction for a married-filing- joint return when both spouses receive income from 1 or more such sources is determined based on the actual amount of income which is received by each individual but not to exceed $2,500.00 per individual.
3. The aggregate subtraction allowed for purposes of individuals filing married-filing-separate returns shall not exceed the limitations as delineated in this rule.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

R15-2C-302. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-303. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-304. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1044, effective April 11, 2017 (Supp. 17-2).

R15-2C-305. Social Security and Railroad Retirement Benefits

A. Under A.R.S. § 43-1022, a taxpayer shall subtract from Arizona gross income the amount of Social Security and Tier 1 Railroad Retirement benefits taxable under Internal Revenue Code § 86 that is included in federal adjusted gross income.

B. In accordance with 45 U.S.C. 231(m), a taxpayer shall subtract from Arizona gross income the amount of benefits provided under the Railroad Retirement Act of 1974 that is included in federal adjusted gross income and not subtracted under subsection (A).

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-306. Income Previously Recognized
A taxpayer shall not include the same income item twice in computing Arizona taxable income.

1. If a taxpayer includes an income item in determining federal adjusted gross income or federal taxable income for a taxable year, the taxpayer shall not include that income a second time in determining Arizona taxable income for the same taxable year.
2. If a taxpayer included an income item in an Arizona income tax return and includes the same income item again in the computation of either federal adjusted gross income or Arizona taxable income in a subsequent return, the taxpayer shall subtract the income item included for the second time in the subsequent return to determine Arizona adjusted gross income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-307. Exemption for Blind Persons

A. If both a husband and wife are blind or partially blind and they elect to file a joint return, they may claim a total of 2 exemptions under A.R.S. § 43-1023(A). For purposes of this Section, "partially blind" means an individual whose vision is no better than 20/200 in the better eye with correcting lenses or who has a field of vision of 20 degrees or less.

B. If a taxpayer or the taxpayer's spouse dies during the taxable year and the decedent was blind or partially blind on the date of death, the decedent is eligible for the exemption under A.R.S. § 43-1023(A).

C. If a taxpayer or the taxpayer's spouse for whom the taxpayer is claiming an exemption under A.R.S. § 43-1023(A)(2) is partially blind on the last day of the taxable year, the taxpayer shall obtain a statement from a licensed optometrist or a physician skilled in diseases of the eye. The taxpayer shall keep the statement for the taxpayer's records. The statement shall certify that the person claiming the exemption or on whose behalf the exemption is claimed:

1. Has vision no better than 20/200 in the better eye with correcting lenses, or

2. Has a field of vision of 20 degrees or less.

D. If the taxpayer's vision is not likely to improve beyond the condition listed in subsection (C), the taxpayer may obtain a statement certified by a licensed optometrist or a physician skilled in diseases of the eye to this effect instead of the annual statement required under subsection (C). The taxpayer shall keep the statement for the taxpayer's records.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-308. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

R15-2C-309. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2889, effective June 13, 2001 (Supp. 01-2).

ARTICLE 4. EXPIRED

R15-2C-401. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective November 14, 2017 (Supp. 17-4).

ARTICLE 5. CREDITS

R15-2C-501. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2441, effective August 6, 2005 (Supp. 05-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective November 14, 2017 (Supp. 17-4).

R15-2C-502. Property Tax Credit

A. The following definitions apply for purposes of this Section:
1. "Adjusted gross income" means the sum of all income not specifically excluded in A.R.S. § 43-1072 whether or not subject to Arizona income tax, except those items that A.R.S. § 43-1072 specifically includes in income.
2. "Member of the household" means a claimant and any other person residing with the claimant in the homestead during the taxable year, whether or not the person is related to, or a dependent of, the claimant.

B. Household income determines eligibility for, and amount of, a property tax credit. A claimant shall arrive at household income by combining the separately determined income of each member of the household.

C. For purposes of arriving at adjusted gross income for each member of the household, all of the following apply:
1. Income from business or farm activities is net income or loss from business or farm activities, determined in the same manner as income or loss reportable for federal income tax purposes;
2. Income from rents or royalties is gross income from rent or royalty activities less deductions, determined in the same manner as income or loss reportable for federal income tax purposes; and
3. Income from capital gains is the net capital gains and losses for each member of the household. Net losses are limited to $1,500 for each household member.

D. There shall be only one claimant under this Section per household per year.

E. If a claimant files a property tax credit claim, the claimant shall attach the following documents to the claim, as applicable:
1. If the claimant owns a home, a copy of the property tax statement indicating the amount of taxes paid for the tax year, the property tax bill stamped "paid," or copies of cancelled checks for taxes paid and a copy of the property tax bill;
2. If the claimant is a resident of a nursing home or a renter, a copy of the completed Arizona Form 201;
3. If the claimant owns a mobile home and pays rent on the mobile home space, a copy of the completed Arizona Form 201 and a copy of the property tax statement indicating the amount of taxes paid on the mobile home for the tax year, the property tax bill stamped "paid," or copies of cancelled checks for taxes paid and a copy of the property tax bill;
4. If the claimant is a shareholder of a cooperative corporation or a condominium association, a statement of the claimant's pro rata share of the assessed property taxes for the tax year and a copy of either:
   a. The mortgage company statement of the corporation or association indicating the total amount of property taxes paid for the tax year; or
   b. A copy of the tax bill of the corporation or association stamped "paid;" or
5. If the claimant received Title 16 Supplemental Security Income payments, a statement from the Social Security Administration indicating the amount of payments for the current tax year.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2441, effective August 6, 2005 (Supp. 05-2).

R15-2C-503. Renewable Energy Production Tax Credit

A. For each year for which an owner of a qualified energy generator plans to claim a renewable energy production tax credit, the owner shall file one of the following applications:
1. An initial application in accordance with subsection (B) for:
   a. Energy produced in 2011 for which an owner of a qualified energy generator plans to claim a credit on the 2011 tax return filed in 2012, and
   b. Energy produced after 2011 for which an owner of a qualified energy generator did not have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1083.02(G).
2. A renewal application in accordance with subsection (C) for an owner of a qualified energy generator that did have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1083.02(G).

B. An initial application shall include the following information:
1. The information required by A.R.S. § 43-1083.02(F).

2. The business structure of the applicant.
3. If the credit will be passed through to shareholders or partners, a list including the name, taxpayer identification number, and ownership percentage of each shareholder or partner. If the tax year end is other than December 31, and the shareholders or partners, or ownership percentages change, the applicant shall update the list for the tax year end by the due date of the applicant's Arizona return, including extensions.
4. The applicant's tax year end.
5. The name of the contact person, his or her title, telephone number and fax number.
6. If the applicant has any affiliates or subsidiaries, a list of the affiliates and subsidiaries, including the name, address, taxpayer identification number, and percentage of ownership. The applicant may substitute a federal Form 851, or other federal form with the required information, for this list.
7. Self-assigned name or identification number of the qualified energy generator.
8. Assessor's parcel number or numbers of the land on which the qualified energy generator is located or, if not available, the legal description.
9. The centrally valued property tax identification number for the personal property on the land.
10. The type of qualified energy resource used to generate electricity. If the qualified energy resource is biomass, the type of biomass.
11. The generating capacity of the qualified energy generator.
12. The number of kilowatt-hours of electricity produced for the calendar year.
13. Printouts for the calendar year from the production meter located at the qualified energy generator that:
    a. Measures the output from the qualified energy generator, and
    b. Provides the output information to a grid-tied energy management system.
14. A signed affidavit in which the applicant states that the information contained in the application is true and correct under penalty of perjury and that the qualified energy generator for which the applicant is claiming the credit did not produce electricity prior to 2011.

C. A renewal application shall include the information required by subsections (B)(1) through (6) and (B)(12) through (14). In addition, where the information required by subsections (B)(7) through (11) has changed since the prior year's application, the applicant shall provide the new information on the renewal application.

D. Copies of invoices or receipts from the electricity purchaser, verifying kilowatt-hours sold, shall be made available to the Department upon request.

E. If an owner owns more than one qualified energy generator, the owner shall submit a separate application for each qualified energy generator.

F. Each application shall be mailed separately in its own envelope by United States Postal Service Express Mail to: Arizona Department of Revenue, Renewable Energy Production Tax Credit Program, P.O. Box 25248, Phoenix, AZ 85002. Notwithstanding A.R.S. § 1-218(E)(1), the Department shall not accept applications through any other delivery method for purposes of this Section and A.R.S. § 43-1083.02.

G. For each initial application received in accordance with subsections (B) and (F), the Department shall assign a priority placement number that reflects the date and time on the Express Mail label, without regard to which time zone mailing took place.

H. If the Department receives more than one initial application in accordance with subsection (G) that it would assign the same priority placement number based on date and time on the Express Mail label, then the order received shall be determined by a random drawing of affected applications.

I. If the Department denies an application or approves a smaller amount of credit than the amount requested on the application, the Department's decision is an appealable agency action as defined in A.R.S. § 41-1092(3) and the applicant may appeal the decision under subsection (J) and A.R.S. Title 41, Chapter 6, Article 10.

J. To appeal a decision made under subsection (I), the applicant shall file a petition, in accordance with A.A.C. R15-10-105(B) and A.R.S. § 41-1092.03(B), within 30 days of receipt of the Department's decision.

K. For each decision made under subsection (I), the Department shall reserve the portion of the cap that the applicant would have been entitled to if the Department had approved the application in full, up to the generator cap limit, until the applicant waives or exhausts the appeal rights in subsection (J).

L. For the cap reserved under subsection (K), once the applicant waives or exhausts the appeal rights in subsection (J), the Department shall certify the cap to the next eligible applicant on the Credit Authorization List, until the full cap is certified.

M. In addition to the definitions provided in A.R.S. § 43-1083.02, unless the context provides otherwise, the following definitions apply to this Section and to implementation of A.R.S. § 43-1083.02:
1. "Cap" means the annual tax credit limit of $20 million in A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).
2. "Generator cap" means the annual tax credit limit of $2 million per qualified energy generator in A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).

Historical Note

New Section made by final rulemaking at 18 A.A.R. 600, effective April 8, 2012 (Supp. 12-1).

ARTICLE 6. NONRESIDENTS

R15-2C-601. Income of a Non-resident

A. Gross income
1. Non-residents of the state are required to include in the Arizona gross income only that portion of their federal adjusted gross income which is relevant in determining the amount of net income derived from sources within this state.
2. The gross income of a non-resident of the state who is a member of a partnership, pool, or syndicate includes the member's distributive share of the net income of the partnership, pool, or syndicate in addition to any other income from sources within this state to the extent that the member's distributive share is derived from sources within this state.
3. A non-resident beneficiary of an estate or trust must include in gross income, income from the estate or trust which is deductible by the estate or trust and which is derived from sources within this state.

B. Income from sources within this state includes:
1. Income from real or tangible personal property located in this state.
2. Income from a business, trade, or profession carried on within this state.
3. Income from stocks, bonds, notes, bank deposits, and other intangible personal property having a business or taxable situs in this state.
4. Rentals or royalties for the use of or for the privilege of using in this state patents, copyrights, secret processes

and formulas, good will, trade marks, trade brands, franchises, and other like property having a taxable or business situs in this state.

C. Income from real or tangible personal property. Income of a non-resident from sources within this state includes rents from real or tangible personal property in this state, gains realized from the sale or transfer of such property regardless of where the sale or transfer is consummated, and any other type of income derived from the ownership, control, or management of real and tangible personal property located in this state irrespective of whether a trade, business, or profession is carried on within this state.

D. Income from a business, trade, or profession

1. If a non-resident's business, trade, or profession is carried on entirely without the state, no portion of the gross income therefrom should be reported. If, on the other hand, the non-resident's business, trade, or profession is conducted wholly within the state, the entire gross income therefrom must be reported.
2. If the non-resident's business, trade, or profession is conducted partly within and partly without the state, and the part within the state is so separate and distinct from and unconnected with the part without the state that the net income from the part within the state can be determined without regard to the part without the state, only the gross income from the business, trade, or profession within the state should be reported. Thus, if a non-resident operates hotels both in this state and elsewhere for example, he should report only the gross income from the hotels in this state.
3. Unitary business
   a. The gross income from the entire business, trade, or profession must be reported if a business, trade, or profession carried on within this state is an integral part of a unitary business carried on both within and without the state, or if the part within the state is so connected with the part without the state that the net income from the part within the state cannot be accurately determined independently of the part without the state. Thus, if a non-resident engaged in the business of manufacturing and selling goods for example maintains a factory outside this state and sales offices in this state or vice versa, he must report the gross income from the entire business.
   b. The net income from sources within this state subject to the tax imposed by the law should be determined by subtracting from gross income the deductions allowed by the law and by apportioning the remaining net income to sources within and without the state in the manner described in subsection (D)(4).
4. Every non-resident who conducts a business, trade, or profession within and without the state of the character described in subsection (D)(3) should accompany his return with a schedule of statement showing the following:
   a. The total value of real and tangible personal property
      i. Within the state
      ii. Within and without the state
   b. The total wages, salaries, and other compensation paid for personal services performed
      i. Within the state
      ii. Within and without the state
   c. The total gross sales or charges for personal services performed
      i. Within the state
      ii. Within and without the state
   d. "Total gross sales within the state" shall include all sales relating to Arizona business even though the sales may be subject to confirmation at an out-of-state office and even though title may actually pass at some point outside of this state. Such sales shall include all sales where the product sold is to be used in Arizona. The value of real and tangible personal property generally should be determined by taking the average of the value of such property at the beginning of the taxable year and at the end of the taxable year. Only property used in the business, trade, or profession should be included.
   e. Generally, the amount of net income from a business, trade, or profession of the character described in (D)(3) above which is derived from sources within the state may be determined by taking that portion of the total net income equal to the average percentage of subsections (D)(4)(a)(i), (b)(i) and (c)(i) to subsections (D)(4)(a)(ii), (b)(ii) and (c)(ii) respectively as shown by the schedule or statement accompanying the return.
   f. The use of the foregoing factors shall not be exclusive, and, if the Department believes that the net income from sources within this state cannot properly be determined by the above method, it may require additional factors to be used in making the allocation such as purchases or expenses of manufacture. If a non-resident taxpayer believes that the net income from sources within this state cannot properly be determined by the above method, he may employ another method after 1st receiving the consent of the Department.
   g. Wages, salaries and other compensation for personal services performed in this state
      i. The gross income from commissions earned by a non-resident traveling salesman, agent, or other employee for services performed or sales made whose compensation depends directly on the volume of business transacted by him includes that proportion of the compensation received which the volume of business transacted by that employee with this state bears to the total volume of business transacted by him within and without the state.
      ii. Non-resident actors, singers, performers, entertainers, wrestlers, boxers, etc., must include in gross income as income from sources within this state the gross amount received for performances in this state.
      iii. Non-resident attorneys, physicians, account ants, engineers, etc., even though not regularly engaged in carrying on their professions in this state, must include in gross income as income from sources within this state the entire amount of fees or compensation for services performed in this state on behalf of their clients.
      iv. If non-resident employees including officers of corporations but excluding employees mentioned in subsection (D)(4)(g)(i) above are employed continuously in this state for a definite portion of any taxable year, the gross income of the employees from sources within this state includes the total compensation for the period employed in this state.

v. If non-resident employees are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, truck, etc., between this state and other states, and foreign countries, and are paid on a daily, weekly, or monthly basis; the gross income from sources within this state includes that portion of the total compensation for personal services which the total amount of working time within this state bears to the total amount of working time both within and without the state. If the employees are paid on a mileage basis, the gross income from sources within this state includes that portion of the total compensation for personal services which the number of miles traversed in this state bears to the total number of miles traversed within and without the state. If the employees are paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to this state that portion of the total compensation which is reasonably attributable to personal services performed in this state.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Correction to manifest typographical error, under subsection R15-2C-601(D)(4)(d), deleted "0" between "sales" and "within" (Supp. 08-4).

R15-2C-602. Income from Intangible Personal Property

A. Income of non-residents from rentals or royalties for the use of or for the privilege of using patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property in this state is taxable if such intangible property has a business situs in this state within the meaning of subsection (C) below.

B. Income of non-residents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is taxable as income from sources within this state only if the property has a situs for taxation in this state. However, if a non-resident buys or sells stocks, bonds, and other such property in this state or places orders with brokers in this state to buy or sell such property regularly, systematically, and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on here irrespective of the situs of the property for taxation.

C. Business situs of intangible personal property

1. Intangible personal property has a business situs in this state if it is employed as capital in this state or possession and control of the property has been localized in connection with a business, trade, or profession in this state so that the substantial use of the property and the value attached to it become an asset of the business, trade, or profession in this state.

   Example: If a non-resident pledges stocks, bonds, or other intangible personal property in this state as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in this state, the property has a business situs here. Again, if a non-resident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in this state, the bank account has a business situs here.

2. If intangible personal property of a non-resident has acquired a business situs here, the entire income from the sale thereof is income from sources within this state and is taxable to the non-resident regardless of where the sale is consummated.

D. Transactions in this state extending over a period of less than 6 months shall not constitute doing business within this state.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

R15-2C-603. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2441, effective August 6, 2005 (Supp. 05-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective November 14, 2017 (Supp. 17-4).

R15-2C-604. Nonresident Members of Professional Athletic Teams

A. The Arizona source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of the professional athletic team during a taxable year which the number of duty days spent within Arizona rendering services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without Arizona during the taxable year. Duty days shall be included in the taxable year in which they occur.

B. Travel days that do not involve a game, practice, team meeting, promotional caravan or other similar team event in Arizona are not considered duty days spent in Arizona. However, these travel days shall be considered in the total duty days spent both within and without Arizona.

C. For purposes of this Section:

1. The term "professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.
2. The term "member of a professional athletic team" includes employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and perform services for a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, trainers, and broadcasters.
3. The term "duty days" includes:
   a. All days during a taxable year from the beginning of a professional athletic team's 1st regular game of the season through the last game in which the team competes or is scheduled to compete except:
      i. If a person joins a team during the period described in subsection (C)(3)(a), the person's duty days shall begin on the day the person joins the team. Conversely, if a person leaves a team during the period described in subsection (C)(3)(a), the person's duty days shall end on the day the person leaves the team. If a person switches teams during the taxable year, a separate duty day calculation shall be made for the period the person is with each team.
      ii. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner,

including days when the member is suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

b. Days that do not fall within the period described in subsection (C)(3)(a) on which a member of a professional athletic team renders a service for a team, except practice days and exhibition games before the 1st regular game of the season (for example, participation in instructional leagues, the "Pro Bowl," or promotional events). Rendering a service includes conducting training after the 1st regular game of the season and rehabilitation activities, but only if conducted at the team facilities.

c. Game days (except exhibition games, practice days, and days spent at team meetings after the 1st regular game of the season), promotional events, and days served with the team through all post-season games in which the team competes or is scheduled to compete.

d. Days on the disability list. However, days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at team facilities in Arizona and is not otherwise rendering services for the team in Arizona, shall not be considered duty days spent in Arizona.

e. The provisions of this subsection can be illustrated by the following examples:

Example 1: Player A, a member of a professional athletic team, is a nonresident of Arizona. Player A's contract for the team requires A to report to the team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract that covers seasons that occur during year1/year2 and year2/year3. Player A's contract provides that A receives $500,000 for the year1/year2 season and $600,000 for the year2/year3 season. Assuming player A receives $550,000 from the contract during taxable year 2 ($250,000 for one-half the year1/year2 season and $300,000 for one-half the year2/year3 season), the portion of the compensation received by player A for taxable year 2, attributable to Arizona, is determined by multiplying the compensation player A receives during the taxable year ($550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Arizona during taxable year 2 (attributable to both the year1/year2 season and the year2/year3 season) and the denominator of which is the total number of player A's duty days spent both within and without Arizona for the entire taxable year.

Example 2: Player B, a member of a professional athletic team, is a nonresident of Arizona. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a team facility, but is located in Arizona, B's team travels to Arizona for a game. The number of days B's team spends in Arizona for practice, games, meetings, and other activities, while B is present at the clinic, are not considered duty days spent in Arizona for B for that taxable year for purposes of this Section, but the days are included within total duty days spent both within and without Arizona.

Example 3: Player C, a member of a professional athletic team, is a nonresident of Arizona. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the team facilities in Arizona as well as at personal facilities in Arizona. The days C performs rehabilitation exercises in the team facilities are duty days spent in Arizona for C for that taxable year for purposes of this Section. However, days C spends at personal facilities in Arizona are not duty days spent in Arizona for C for the taxable year for purposes of this Section, but these days are included within total duty days spent both within and without Arizona.

Example 4: Player D, a member of a professional athletic team, is a nonresident of Arizona. During the season, D travels to Arizona to participate in the annual all-star game as a representative of D's team. The number of days D spends in Arizona for practice, the game, meetings, etc., are duty days spent in Arizona for D for the taxable year for purposes of this Section, as well as being included within total duty days spent both within and without Arizona.

Example 5: Assume the same facts as given in example 4, except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Instead D is travelling to and attending the game solely as a spectator. The number of days D spends in Arizona for the game are not duty days spent in Arizona for purposes of this Section. However, these days are included within total duty days spent both within and without Arizona.

4. The term "total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered from the beginning of the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year. Total compensation includes compensation received for services that are rendered during the taxable year on a date that does not fall within this period (for example, participation in instructional leagues, the "Pro Bowl," or promotional events).

5. For purposes of subsection (C)(4) total compensation includes, but is not limited to, salaries, wages, bonuses as described in subsection (C)(6), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed during the year. Total compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered for the team.

6. For purposes of this Section, "bonuses" included in "total compensation for services rendered as a member of a professional athletic team" subject to the allocation described in subsection (A) are:

a. Bonuses earned as a result of play (for example, performance bonuses) during the season, including bonuses paid for championship, playoff or "bowl" games played by the team, or for selection to all-star league or other honorary positions; and

b. Bonuses paid for signing a contract, unless all of the following conditions are met:

i. The payment of the signing bonus is not conditional upon the signee playing any games for

the team, or performing any subsequent services for the team, or even making the team;

ii. The signing bonus is payable separately from the salary and any other compensation; and

iii. The signing bonus is nonrefundable.

D. If it is demonstrated that the method provided under this Section does not fairly and equitably apportion compensation, the Department may allow the member of a professional athletic team to apportion and allocate compensation under an alternative method prescribed by the Department as long as the prescribed method results in a fair and equitable apportionment. A nonresident member of a professional athletic team may submit a proposal for an alternative method to apportion compensation if the nonresident member demonstrates that the method provided under this Section does not fairly and equitably apportion compensation. The proposed method must be fully explained in the nonresident member's Arizona nonresident personal income tax return.

E. This Section is effective January 1, 2001.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 4504, effective January 1, 2001 (Supp. 00-4).

R15-2C-605. Nonresident Professional Athletes Who Are Not Team Members

Individual nonresident professional athletes who are not members of a professional athletic team and whose income is event-oriented (for example, golfers, tennis players, boxers, and jockeys) shall allocate to Arizona income earned in Arizona and expenses allowable in arriving at federal adjusted gross income that are allocable to the Arizona source income.

Example: A professional golfer comes into Arizona to compete in a tournament. The golfer wins $150,000 prize money based on success in the tournament. The golfer must report the $150,000 to Arizona as Arizona income. The golfer may subtract expenses that are allowable in arriving at federal adjusted gross income and that are incurred in winning the $150,000.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 4504, effective November 7, 2000 (Supp. 00-4).

ARTICLE 7. REPEALED

R15-2C-701. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5715, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4249, effective October 24, 2008 (Supp.08-4).

R15-2C-702. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5715, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4249, effective October 24, 2008 (Supp.08-4).

R15-2C-703. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5715, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4249, effective October 24, 2008 (Supp.08-4).

R15-2C-704. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5715, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4249, effective October 24, 2008 (Supp.08-4).

R15-2C-705. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5715, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4249, effective October 24, 2008 (Supp.08-4).

SUBCHAPTER D. CORPORATIONS

ARTICLE 1. GENERAL

R15-2D-101. Definitions

In addition to the definitions provided in A.R.S. §§ 43-104, 43-1101, and 43-1131, the following definitions apply to this Subchapter:

"Allocation" means the assignment of nonbusiness income to a particular state.

"Apportionment" means the division of business income between states by the use of a formula that contains apportionment factors.

"Arizona affiliated group" has the same meaning as prescribed in A.R.S. § 43-947(I).

"Business activity" means transactions and activity occurring in the regular course of a particular trade or business of a taxpayer.

"Combined return" means a corporate income tax return filed by a group of commonly owned corporations or businesses that constitute a unitary business, except that a combined return does not include either a foreign corporation that is not itself subject to a tax imposed by A.R.S. Title 43, or an insurance company that is exempt under A.R.S. § 43-1201.

"Consolidated return" means a corporate income tax return filed by an Arizona affiliated group under A.R.S. § 43-947.

"Employee" means any officer of a corporation; or any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

"Incidental to" means occurring in, or associated with, the normal, typical, or customary operations of the particular trade or business under consideration.

"Sales" means all gross receipts derived by a taxpayer from transactions and activity in the regular course of a trade or business and includes all gross receipts of the taxpayer not allocated under A.R.S. §§ 43-1134 through 43-1138.

"Unitary business" means an entity, group of entities, or components of an entity whose basic operations are substantially integrated and interdependent. The determination of whether an entity, group of entities, or components of an entity constitute a unitary business is made under R15-2D-401.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 2. ADDITIONS TO ARIZONA GROSS INCOME

R15-2D-201. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 654, effective January 11, 2001 (Supp. 01-1).

ARTICLE 3. SUBTRACTIONS FROM ARIZONA GROSS INCOME

R15-2D-301. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 654, effective January 11, 2001 (Supp. 01-1).

R15-2D-302. Corporate Net Operating Loss

A. The following definitions apply for purposes of this rule:
1. "Arizona adjusted income" means Arizona gross income of the taxpayer adjusted by the additions and subtractions as delineated in A.R.S. Title 43, Chapter 11, Article 3, except as provided in subsections (B) and (E) of this rule.
2. "Arizona gross income" means federal taxable income for the taxable year.
3. "Arizona net operating loss" means Arizona adjusted income which is a negative amount.
4. "Taxable year" means taxable year as defined in statute.

B. In calculating the Arizona net operating loss, the taxpayer shall not include:
1. An Arizona net operating loss carryforward,
2. A net operating loss incurred by the taxpayer prior to doing business in Arizona; or,
3. A net operating loss from a prior period if such loss was incurred by another corporation or group of corporations, prior to a merger, consolidation, or reorganization with the taxpayer, to the extent that Arizona adjusted income, earned after the merger, consolidation, or reorganization, is not attributable to the same entity which incurred the net operating loss.
   a. A net operating loss, incurred by a separate corporation required to file a combined return, may be carried forward against that portion of the combined income which is related to the former separate corporation.
   b. The portion of any combined net operating loss which is related to a separate corporation which is determined to not be includible in the unitary group may be carried forward against income of that corporation computed on a separate basis.
   c. The portion of the combined income or loss which is related to the separate corporation shall be determined by computing a ratio based on the property, payroll, and sales factors of the separate corporation to the combined group's total property, payroll, and sales factors. This ratio shall be multiplied by the combined net income or loss subject to apportionment resulting in the net income or loss attributable to the separate corporation.
   d. If the separate corporation operates both within and without Arizona, the Arizona portion of the separate corporation's income or loss shall be computed by multiplying the income attributable to that separate corporation by the corporation's ratio of Arizona property, payroll, and sales factors to the corporation's total property payroll and sales factors plus any income or loss allocable to Arizona.

C. An Arizona net operating loss may be carried forward to each of the 5 succeeding taxable years of the taxpayer.
1. An Arizona net operating loss, or any part thereof, which is not used during the 5 succeeding taxable years, shall be lost to the taxpayer.
2. A taxpayer shall not carryback an Arizona net operating loss.
3. Arizona net operating loss carryforwards shall be reduced by the amount of Arizona adjusted income incurred in any of the 5 succeeding taxable years.
4. For purposes of determining the 5-year carryforward limitation, each Arizona net operating loss carryover shall be applied separately to Arizona adjusted income in the order in which the Arizona net operating loss was incurred.
5. The aggregate of all Arizona net operating loss carryforwards meeting the 5-year carryforward limitation may be applied to any Arizona adjusted income incurred in a taxable year.

D. A taxpayer claiming an Arizona net operating loss carryforward shall file a statement with the corporate income tax return for the taxable year in which the Arizona net operating loss carryforward is claimed. The statement shall include a detailed schedule showing the computation of the Arizona net operating loss carryforward.

E. In calculating and applying an Arizona net operating loss, a multistate taxpayer shall be subject to:
1. The provisions of A.R.S. Title 43, Chapter 11, Article 4;
2. The statutory provisions regarding the Arizona net operating loss; and
3. The provisions of this rule.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

R15-2D-303. Domestic International Sales Corporation (DISC)

A. For purposes of this Section, "DISC" means a corporation that elects to be treated as a DISC under Internal Revenue Code § 992. The Arizona gross income of a DISC is the DISC's federal taxable income computed as if the DISC were a corporation that had not elected to be treated as a DISC. A DISC that meets the combined return filing requirements of R15-2D-401 shall file as part of a combined return unless:
1. The DISC is a foreign corporation that is not subject to Arizona income tax, or
2. The corporation with which the DISC would otherwise be required to file a combined return is a member of an Arizona affiliated group as defined in A.R.S. § 43-947.

B. For purposes of subsections (B) and (C), "deducted amount" means the amount of commissions, rentals, and other amounts paid or accrued to a DISC that is deducted in computing federal taxable income. A corporation that directly or indirectly owns or controls 50% or more of the voting stock of a DISC shall add to Arizona gross income the entire deducted amount, unless either subsection (B)(1) or (B)(2) applies.
1. If the corporation and the DISC file as part of the same Arizona combined return, no addition to Arizona gross income is required.
2. If the DISC is taxable in Arizona and subsection (B)(1) does not apply, the addition to Arizona gross income is the deducted amount minus the quotient of the DISC's Arizona taxable income attributable to the deducted amount divided by the corporation's apportionment ratio computed under A.R.S. § 43-1139. In no case shall the addition to Arizona gross income be less than zero.

Example: Corporation A owns 60% of the voting stock of a DISC. Corporation A has a 50% Arizona apportionment ratio and the DISC has a 10% Arizona apportionment ratio for the taxable year. Corporation A and the DISC are not required to file a combined return. Corporation A pays the DISC commissions of $100,000 and deducts this amount on its federal income tax return. The DISC's Arizona taxable income attributable to the commission is $10,000 ($100,000 x 10%). Therefore, Corporation A's addition to Arizona gross income for the DISC commissions is $80,000 ($100,000 - ($10,000 ÷ .50)).

C. A corporation that deducts the interest charge required under Internal Revenue Code § 995(f) in determining federal taxable income for the taxable year shall add to Arizona gross income the amount of the interest charge deducted, unless subsection (C)(1), (C)(2), or (C)(3) applies.

1. If the corporation and a DISC file as part of the same Arizona combined return for the taxable year in which the corporation reports DISC income related to the interest charge, the corporation shall not add the interest charge to Arizona gross income.
2. If the interest charge is attributable to the deducted amount that the corporation is required to add to Arizona gross income under subsection (B), the corporation shall not add the interest charge to Arizona gross income.
3. If the interest charge is attributable to income of a DISC, the dividends of which are includible in the corporation's Arizona taxable income, the corporation shall not add the interest charge to Arizona gross income.
   Example: Corporation B owns 30% of a DISC that is not a foreign corporation. If the DISC dividends are includible in the Arizona taxable income of Corporation B, the interest charge is not added to Corporation B's Arizona gross income.

D. The Department shall not adjust DISC transactions that comply with the inter-company pricing provisions of Internal Revenue Code § 994.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2896, effective June 13, 2001 (Supp. 01-2).

R15-2D-304. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 5220, effective October 31, 2004 (Supp. 04-4).

R15-2D-305. Deferred Exploration Expenses

A. A taxpayer may elect to subtract a ratable portion of deferred exploration expenses added to income under A.R.S. § 43-1121. To make the election, a taxpayer shall attach a statement to the return for the applicable taxable year. The taxpayer shall disclose the following in the statement:

1. The amount of exploration expenses subject to the election; and
2. The name, location, and nature of the ore or mineral deposit to which the election relates.

B. A taxpayer may make an election under this Section at any time before the expiration of the period for filing a claim for credit or refund for the taxable year the election is to be effective. An election made under this Section is binding for the taxable year unless the taxpayer revokes the election to deduct exploration expenses under Internal Revenue Code § 617. If the taxpayer revokes the federal election, the taxpayer shall file Arizona amended income tax returns to reflect the changes in federal taxable income and Arizona taxable income that result from the revocation of the election.

C. Except as provided by subsection (D), a taxpayer shall compute the subtraction for a ratable portion of deferred exploration expenses by using the following formula:

$$A = B \times [C / (C + D)]$$

The above variables are defined as follows:
"A" is the deferred exploration expense subtraction allowable for the taxable year,
"B" is the total deferred exploration expenses reduced by the amount of deferred exploration expenses subtracted in prior taxable years,
"C" is the number of units of ore or mineral sold during the taxable year from the mine or deposit for which the deferred exploration expenses were incurred, and
"D" is the number of units of ore or mineral remaining at the end of the taxable year to be recovered and sold from the mine or deposit for which the deferred exploration expenses were incurred.

D. A taxpayer that has elected to recapture and capitalize exploration expenses under Internal Revenue Code § 617(b)(1)(A) shall reduce the amount computed under subsection (C) by the amount of the federal depletion deducted for the current taxable year that is allocable to the amount of Arizona deferred exploration expenses. A taxpayer shall not reduce the amount computed under subsection (C) to less than zero. A taxpayer shall compute the amount of the federal depletion deduction allocable to the Arizona deferred exploration expenses by multiplying the federal depletion deduction that relates to the mineral interest for which the exploration expenses were incurred by the ratio of the Arizona deferred exploration expenses to the total federal adjusted basis of the mineral interest before any depletion deduction. A taxpayer shall make the computation under this subsection for each subsequent taxable year until the cumulative amount of subtractions for deferred exploration expenses for all taxable years equals the total amount of exploration expenses that were deferred. The amount of the federal depletion deduction allocable to the deferred exploration expenses shall be considered a subtraction of deferred exploration expenses for purposes of computing:

1. The variable B in the formula under subsection (C) for subsequent taxable years,
2. The Arizona adjusted basis under subsection (I), and
3. The cumulative amount of subtractions for deferred exploration expenses.

E. A taxpayer that has elected to recapture and capitalize exploration expenses under Internal Revenue Code § 617(b)(1)(A) and not to defer up to $75,000 of exploration expenses under A.R.S. § 43-1121, shall add to Arizona gross income the amount of federal depletion deducted for the current taxable year that is allocable to the exploration expenses not deferred. A taxpayer shall compute the amount of the federal depletion deduction allocable to the exploration expenses not deferred by multiplying the federal depletion deduction that relates to the mineral interest for which the exploration expenses were incurred by the ratio of the exploration expenses not deferred to the total federal adjusted basis of the mineral interest before any depletion deduction. A taxpayer shall make the adjustment under this subsection for each subsequent taxable year until the cumulative adjustments for all taxable years equal the total amount of exploration expenses not deferred.

F. For purposes of computing the subtraction under subsection (C), a taxpayer shall estimate the number of recoverable units of ore or mineral according to an accepted industry method.

The taxpayer shall revise the estimate if, before the close of the current taxable year, it is determined, as the result of further discovery, development, or operation, that the remaining units are materially greater or less than the units previously estimated. The revised estimate shall be used for the current taxable year and subsequent taxable years until it is determined that another revision is required.

G. A taxpayer that leases an ore or mineral deposit and retains a royalty interest in the ore or mineral deposit may subtract the ratable portion of related deferred exploration expenses as computed under subsection (C).

H. If a taxpayer abandons an ore or mineral interest, the taxpayer may subtract the related unamortized deferred exploration expenses in the taxable year of abandonment. For purposes of this subsection, a taxpayer has abandoned an ore or mineral interest during the taxable year if all of the following conditions exist:

1. The taxpayer has discontinued all operations and activities with respect to the ore or mineral interest.
2. The taxpayer has no intention of exploring, developing, or otherwise using the ore or mineral interest in the future.
3. The taxpayer has no intention of selling, exchanging, or otherwise disposing of the ore or mineral interest.

I. A taxpayer that sells property for which exploration expenses were incurred shall report the difference between the federal adjusted basis of the property and the Arizona adjusted basis of the property in the year of the sale. If the Arizona adjusted basis exceeds the federal adjusted basis, a subtraction from income for the excess is required. If the federal adjusted basis exceeds the Arizona adjusted basis, an addition to income for the excess is required. The Arizona adjusted basis of the property is computed as follows:

1. The federal adjusted basis, plus
2. The exploration expenses added to income under A.R.S. § 43-1121, minus
3. The subtraction from income for the federal exploration expense recapture under A.R.S. § 43-1122, minus
4. The total subtractions from income for deferred exploration expenses allowed under this Section.

J. A taxpayer shall not include the amount of mine exploration expenses that were not deferred under A.R.S. § 43-1121 in computing the subtraction from income for the recapture of mine exploration expenses under A.R.S. § 43-1122.

K. Under A.R.S. § 43-1122, a taxpayer may elect to subtract a ratable portion of deferred exploration expenses related to oil, gas, or geothermal resources. A taxpayer shall make the election and compute the subtraction in the same manner as the election related to ore and mineral property.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4105, effective October 4, 2000 (Supp. 00-4).

R15-2D-306. Amortization of Property Used for Atmospheric and Water Pollution Control

A. A taxpayer may elect to amortize, over a 60-month period, the adjusted basis of any device, machinery, or equipment that is certified by the Arizona Department of Environmental Quality as property that collects and controls atmospheric and water pollutants and contaminants at their source. The amortization subtractions allowed for the 60-month period are in lieu of the federal depreciation and amortization related to the pollution control property. The related federal depreciation and amortization deducted in computing federal taxable income is an addition to income under A.R.S. § 43-1121. The adjusted basis for purposes of amortization is the basis for determining depreciation under Internal Revenue Code § 167 on the date the pollution control property is placed in service. The adjusted basis does not include land or buildings.

B. A taxpayer that elects to amortize pollution control property shall include a statement in the original or amended return for the taxable year of election. The taxpayer shall identify in the statement each piece of property subject to the election, the month the property is placed in service, the adjusted basis of the property, and the date of certification by the Arizona Department of Environmental Quality.

C. The amortization period is 60 consecutive months beginning with the month the property is placed in service. If the property is disposed of or retired from service before the end of the 60-month period, the amortization period ends with the month of disposition or retirement. The monthly amortization allowable is computed by dividing the adjusted basis of the property at the beginning of the amortization period by 60. The total amortization subtraction for a particular taxable year is the sum of the amortization for each month of the amortization period that falls within the taxable year.

D. A taxpayer may elect to discontinue the amortization election before the end of the 60-month amortization period.

1. A taxpayer shall include a statement in the original or amended return for the taxable year that the election to discontinue amortization is effective. The taxpayer shall identify in the statement each piece of property for which the election to discontinue amortization applies and the last month of amortization.
2. Generally, a taxpayer is not required to make the addition to income referred to in subsection (A) for the months following the election to discontinue amortization. However, an addition to income is required for the federal depreciation or amortization that exceeds the adjusted basis not previously recovered through depreciation or amortization. For example, a taxpayer elects to discontinue amortization after 48 months. If the property had an adjusted basis of $100,000 at the beginning of the amortization period, the adjusted basis remaining to be recovered is $20,000 ($100,000 minus the previous amortization of $80,000). If federal depreciation for the property is $10,000 per year for 10 years, an addition to income of $10,000 per year is required beginning with the third taxable year following the election to discontinue amortization.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4105, effective October 4, 2000 (Supp. 00-4).

R15-2D-307. Amortization of Child Care Facilities

A. The following definitions apply for purposes of amortization of child care facilities under A.R.S. § 43-1130 and this Section:

1. "Child care facility" means a facility as defined under A.R.S. § 36-881.
2. "Employee" means any person employed by a taxpayer that owns a child care facility.
3. "Property" means a child care facility and its related equipment of a character subject to depreciation.

B. For purposes of qualifying for the 24-month amortization period under A.R.S. § 43-1130(B), a child care facility is considered to be primarily for the children of employees of the taxpayer if the required ratio is at least 80% for the taxable

year during which the property is placed in service. The taxpayer shall maintain a required ratio of at least 80% for the subsequent taxable years that include part of the 24-month amortization period.

1. "Required ratio" means:
   a. The total daily attendance of employee children for the taxable year, divided by
   b. The total daily attendance of all children for the taxable year.
2. For purposes of computing the required ratio, the employees of all joint owners of a child care facility are considered to be employees of each of the joint owners.

C. To elect either the 24-month or the 60-month amortization period, a taxpayer shall attach to the income tax return for the taxable year during which the property is placed in service a written statement that contains all of the following information:

1. A clear description of the property.
2. The date of expenditure or the period during which the expenditures were made for the property.
3. The date the property was placed in service.
4. The amount of the expenditure.
5. The amortization period elected.
6. The annual amortization deduction claimed with respect to the property.

D. A taxpayer may make an election under this Section at any time before the expiration of the period for filing a claim for credit or refund for the taxable year that the property is placed in service.

E. A taxpayer may revoke an election made under this Section at any time before the expiration of the period for filing a claim for credit or refund for the taxable year that the property is placed in service. A taxpayer that revokes an election made under this Section shall attach a statement to an amended income tax return for the taxable year that the election was made. The taxpayer shall identify in the statement the property for which the revocation is effective.

F. The amortization period begins with the month the property is placed in service. A taxpayer shall compute the monthly amortization allowable by dividing the cost of the property by the number of months in the amortization period. The total amortization subtraction for a particular taxable year is the sum of the amortization for each month of the amortization period that falls within the taxable year.

1. If the amortization election is terminated as provided under subsection (H), the taxpayer shall prorate the amortization for the month during which the termination occurs, based on the ratio of the number of days in the month that are before the termination date to the total number of days in the month.
2. If a taxpayer qualified for the 24-month amortization in the preceding taxable year and fails to meet the 80% requirement under subsection (B) in the current taxable year, the last month of the preceding taxable year is the final month of amortization.

G. A taxpayer shall treat additions or improvements to an existing item of amortized property as a separate item of property. A taxpayer may treat 2 or more items of property as a single item of property if the items are placed in service within the same month.

H. The amortization election made with respect to an item of property is terminated as of the earliest date on which either of the following occurs:

1. The specific use of the item of property in connection with the operation of a child care facility is discontinued.
2. The child care facility no longer meets applicable requirements in this Section.

I. Under A.R.S. § 43-1121, a taxpayer that elects to amortize child care facility property shall add to Arizona gross income the related federal depreciation or amortization deducted under Internal Revenue Code § 167 or 188. If the Arizona amortization election is terminated, the taxpayer may recover the remaining unamortized cost of the property by reducing the addition to income required under A.R.S. § 43-1121.

1. The amount of the reduction for the taxable year of termination is the amount of the related federal depreciation and amortization allocable to the portion of the taxable year after the termination date.
2. The amount of the reduction for taxable years subsequent to the taxable year of termination is the amount of the related federal depreciation and amortization.
3. The taxpayer may reduce the addition to income in the taxable year of termination and subsequent taxable years until the cumulative reductions equal the unamortized cost of the property.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4105, effective October 4, 2000 (Supp. 00-4).

ARTICLE 4. MULTISTATE DIVISION OF INCOME

R15-2D-401. Unitary Business and Combined Returns

A. An entity, group of entities, or components of an entity is not a unitary business for apportionment purposes unless there is actual substantial interdependence and integration of the basic operations of the business carried on in more than one taxing jurisdiction. The potential to operate an entity or a component as part of the unitary business is not dispositive.

B. The determination of whether the operations of a taxpayer constitute a unitary business is based on economic substance and not form. Therefore, a unitary business may consist of part of a corporation, one corporation, or many corporations. If the unitary business consists of more than one corporation, the corporations comprising the unitary business shall file a combined return apportioning the business income of the corporations using a single apportionment formula.

C. The main reason for defining a business as unitary is that its components in various states are so tied together at the basic operational level that it is difficult to determine the state in which profits are earned. Centralized top-level management, financing, accounting, insurance and benefit programs, or overhead functions by a home office are not sufficient for a business to be unitary without further analysis of the basic operations of the components.

D. The following are necessary threshold characteristics for components of an entity, an entity, or a group of entities to be considered a unitary business:

1. The entities comprising the unitary business are owned or controlled, directly or indirectly, by the same interests that collectively own more than 50 percent of the voting stock,
2. The entities or components share common management, and
3. The entities or components have reconciled accounting systems.

E. The presence of the three characteristics listed in subsection (D) is not sufficient for a business to be considered unitary without evidence of substantial operational integration. Factors that indicate operational integration include the following:

1. The same or similar business conducted by components;

2. Vertical development of a product by components, such as manufacturing, distribution, and sales;
3. Horizontal development of a product by components, such as sales, service, repair, and financing;
4. Transfer of materials, goods, products, and technological data and processes between components;
5. Sharing of assets by components;
6. Sharing or exchanging of operational employees by components;
7. Centralized training of operational employees;
8. Centralized mass purchasing of inventory, materials, equipment, and technology;
9. Centralized development and distribution of technology relating to the day-to-day operations of the components;
10. Use of common trademark or logo at the basic operational level;
11. Centralized advertising with impact at the basic operational level;
12. Exclusive sales-purchase agreements between components;
13. Price differentials between components as compared to unrelated businesses;
14. Sales or leases between components; and
15. Any other integration between components at the basic operational level.

F. Not all of the factors listed in subsection (E) need be present in every unitary business.

G. A manufacturing, producing, or mercantile type of business is not a unitary business unless there is a substantial transfer of material, products, goods, technological data and processes, or machinery and equipment between the branches, divisions, subsidiaries, or affiliates.
1. A transfer of 20 percent of the total goods annually manufactured, produced, or purchased as inventory for processing or sale, or both, by the transferor, or 20 percent of the total goods annually acquired for processing or sale, or both, by the transferee is presumptive evidence of a unitary business.
2. A smaller percentage of goods transferred may be indicative of a unitary business if other characteristics indicating substantial operational integration are present.

H. In a unitary service business, the operations of the various components or entities of the business are integrated and interrelated by their involvement with the central office or parent in delivering substantially the same service. The day-to-day operations of the components or entities use the same procedures and technologies that are developed, organized, purchased, or prescribed by the central office or parent. There usually is an exchange of employees among the components or entities and centralized training of employees.

I. A taxpayer may have more than one unitary business. In this case, it is necessary to determine the business income attributable to each separate unitary business. The income of each business is apportioned using an apportionment formula that considers the in-state and out-of-state factors of the business.

J. Generally, a conglomerate composed of diverse businesses is not a single unitary business. However, a line or lines of business within the conglomerate may be a unitary business if the operations of the components of the line or lines are integrated and interrelated.

K. All members of a combined return shall determine income using the same accounting period.
1. If the members of a combined return have different accounting periods, the accounting period to be used by the members shall be determined as follows:
   a. If the combined return includes the common parent corporation, the parent's accounting period is used.
   b. If the combined return does not include the common parent corporation, the accounting period of a member that has a presence in Arizona shall be used. The same group member's accounting period shall be used consistently from year to year.
2. Each member of a combined return that uses an accounting period that is different from the common accounting period determined in subsection (K)(1), shall use one of the following methods to determine the income to be included in the common accounting period:
   a. Determine income and related deductions using actual book or accounting entries for the relevant period.
   b. Determine income based on the number of months falling within the required common accounting period. For example, if one member uses a calendar year, and the common accounting period ends October 31, 1981, the member will include 2/12 of the income for the year ended December 31, 1980, and 10/12 of the income for the year ended December 31, 1981. Estimates may be necessary if this proration method involves a member's year that ends subsequent to the common accounting period.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-402. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 654, effective January 11, 2001 (Supp. 01-1).

R15-2D-403. Taxable in Another State

A. A taxpayer is subject to the allocation and apportionment provisions of A.R.S. §§ 43-1131 through 43-1148 if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of the business activity, is taxable in another state under either one of the two tests specified in A.R.S. § 43-1133. A taxpayer is not taxable in another state with respect to a particular trade or business merely because the taxpayer conducts activities in that other state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

B. A taxpayer is "subject to" one of the taxes specified in A.R.S. § 43-1133(1) if it carries on business activities in a state and that state imposes one of the taxes on the taxpayer. Any taxpayer that asserts that it is subject to one of the taxes specified in A.R.S. § 43-1133(1) in another state shall furnish to the Department upon its request evidence to support that assertion. The Department may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the laws of the other state. The taxpayer's failure to produce this proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in A.R.S. § 43-1133(1) in the other state.
1. A taxpayer that voluntarily files and pays one or more of the taxes specified in A.R.S. § 43-1133(1) when not required to do so by the laws of the other state or pays a

minimal fee for qualification, organization, or the privilege of doing business in that state is not "subject to" one of the taxes specified in A.R.S. § 43-1133(1) if the taxpayer:

a. Does not engage in business activity in that state; or
b. Engages in some business activity, not sufficient for nexus, and the minimum tax bears no relationship to the taxpayer's business activity within that state.

2. The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activity may impose an income tax even though every state does not do so. In states that do not impose an income tax, other types of taxes may be imposed as a substitute. Therefore, the Department shall consider only those taxes enumerated in A.R.S. § 43-1133(1) that are basically revenue raising rather than regulatory measures in determining whether the taxpayer is "subject to" one of the taxes in another state.

Example 1: State A requires all nonresident corporations that qualify or register in State A to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively higher by bracketed amounts. The statute sets a minimum fee of $50 and a maximum fee of $500. Failure to pay the tax bars a corporation from using the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the Secretary of State but does not carry on any business activity in State A (although it may use the courts of State A). Corporation X is not "taxable" in State A.

Example 2: The facts are the same as example one except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is "subject to" the net income tax of State A and is "taxable" in State A.

Example 3: State B requires all nonresident corporations qualified or registered in State B to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of outstanding capital stock, and surplus and undivided profits. The fee or tax base attributable to State B is determined by a three-factor apportionment formula. Nonresident Corporation X, which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is "taxable" in State B.

Example 4: State A has a corporation franchise tax measured by net income for the privilege of doing business in that state. Corporation X files a return based on its business activity in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.

C. A.R.S. § 43-1133(2) applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of the business activity. Jurisdiction to tax is not present if the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. §§ 381-384.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4). Correction to manifest typographical error, under subsection R15-2D-403(B), deleted "2" between "A.R.S." and "§" as adopted at 5 A.A.R. 3766 (Supp. 08-4).

R15-2D-404. Apportionment Formula

A. All business income of each trade or business of the taxpayer shall be apportioned to this state by use of the apportionment formula in A.R.S. § 43-1139. The elements of the apportionment formula are the property factor, the payroll factor, and the sales factor of the trade or business of the taxpayer.

B. A unitary business that files a combined return shall use an apportionment formula that combines the property, payroll, and sales figures of all of the unitary group members before calculating the factors.

C. An Arizona affiliated group that files a consolidated return shall use an apportionment formula that combines the property, payroll, and sales figures of all of the members of the Arizona affiliated group before calculating the factors.

D. This Section does not apply to a taxpayer engaged in air commerce that apportions its income in accordance with A.R.S. § 43-1139(B).

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-405. Intercompany Eliminations

Members of a combined or consolidated return shall eliminate intercompany amounts included in the group's income, expense, and apportionment factors when necessary to avoid distortion of the group's Arizona taxable income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 5. BUSINESS AND NONBUSINESS INCOME

R15-2D-501. General

A. For purposes of administration, the income of a taxpayer is business income unless clearly classifiable as nonbusiness income.

B. The classification of income by labels, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, or nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical elements in determining whether income is "business income" or "nonbusiness income" are the transactions and activity of a particular trade or business. In general, all transactions and activity of a taxpayer that are the result of or incidental to the operations of a particular trade or business of the taxpayer are transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended

by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-502. Rents From Real and Tangible Personal Property

Rental income from real and tangible personal property is business income if the property with respect to which the rental income is received is used in the taxpayer's trade or business or is incidental to the trade or business and is includable in the property factor.

Example 1: The taxpayer operates a multistate car rental business. The income from the car rentals is business income.

Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

Example 3: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are leased to others. The rental of the two floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income.

Example 4: The taxpayer operates a multistate chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not business income of the grocery store trade or business. Therefore, the net rental income is nonbusiness income.

Example 5: The taxpayer operates a multistate chain of men's clothing stores. The taxpayer invests in a 20-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining 18 floors are leased to others. The rental of the 18 floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not business income of the clothing store trade or business. Therefore, the net rental income is nonbusiness income.

Example 6: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold 18 months later. The rental income is business income and the gain on the sale of the plant is business income.

Example 7: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, the taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, the taxpayer sold the building at a gain (or loss). The net rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-503. Gains or Losses From Sales of Assets

Gain or loss from the sale, exchange, or other disposition of tangible or intangible personal property or real property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was used for the production of nonbusiness income or otherwise was removed from the property factor, in accordance with Article 6, before its sale, exchange, or other disposition, the gain or loss constitutes nonbusiness income.

Example 1: In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business income.

Example 2: The taxpayer constructed a plant for use in its multistate manufacturing business and 20 years later sold the property at a gain while it was in operation by the taxpayer. The gain is business income.

Example 3: Same as example two except that the plant was closed and put up for sale but was not in fact sold until a buyer was found 18 months later. The gain is business income.

Example 4: Same as example two except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business income.

Example 5: The taxpayer operates a multistate chain of grocery stores. It owned an office building that it occupied as its corporate headquarters. Because of inadequate space, the taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an unrelated investment company under a five-year lease. Upon expiration of the lease, the taxpayer sold the building at a gain (or loss). The gain (or loss) on the sale is nonbusiness income and the rental income received over the lease period is nonbusiness income.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-504. Interest

Interest income is business income if the intangible property with respect to which the taxpayer receives interest arises out of or is created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible property is related to or incidental to the trade or business operations.

Example 1: The taxpayer operates a multistate chain of department stores, selling for cash and on credit. The taxpayer receives service charges, interest, or time-price differentials and the like with respect to installment sales and revolving charge accounts. These amounts are business income.

Example 2: The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bear interest. The interest income is business income.

Example 3: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover items such as worker's compensation claims, rain and storm damage, and machinery replacement. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state,

and local tax obligations. The interest income is business income.

Example 4: The taxpayer is engaged in a multistate money order and traveler's check business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by investing the funds pending their redemption. The interest income is business income.

Example 5: The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital totaling $200,000 that it regularly invests in short-term, interest-bearing securities. The interest income is business income.

Example 6: In January, the taxpayer sells all of the stock of a subsidiary for $20,000,000. The funds are placed in an interest-bearing account pending a decision by management as to how the funds are to be used. The interest income is nonbusiness income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-505. Dividends
Dividends are business income if the stock with respect to which the taxpayer receives dividends arises out of or was acquired in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations.

Example 1: The taxpayer operates a multistate chain of stock brokerage houses. During the year, the taxpayer receives dividends on stock that it owns. The dividends are business income.

Example 2: The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover items such as worker's compensation claims, rain and storm damage, and machinery replacement. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income.

Example 3: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock to obtain a source of supply of materials used in its manufacturing business. The dividends are business income.

Example 4: The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. To maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

Example 5: The taxpayer receives dividends from the stock of its subsidiary or affiliate, which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

Example 6: The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock and interest-bearing securities, the acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonbusiness income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-506. Royalties
Patent and copyright royalties are business income if the patent or copyright with respect to which the taxpayer receives royalties arises out of or is created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is related to the trade or business operations. Other royalties and licensing fees are business income if the property or licensing agreement that generates the income arises out of or is created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the property or license agreement is related to or incidental to the trade or business operations.

Example 1: The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

Example 2: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. The taxpayer later uses these acquired copyrights in its business. Any royalties received on these copyrights are business income.

Example 3: The same as example two, except that the acquired company also held the patent on a type of phonograph needle. The taxpayer does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent are nonbusiness income.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-507. Proration of Deductions
In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from a particular trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may apply to the business incomes of more than one trade or business or to several items of nonbusiness income. In these cases the deduction shall be prorated among the trades or businesses and the items of nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it applies.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-508. Consistency and Uniformity in Reporting

A. If a taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income, or the manner of prorating any related deduction, in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or nonbusiness income, or the application or proration of any related deduction, the taxpayer shall disclose the nature and extent of the variance upon request by the Department.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 6. PROPERTY FACTOR

R15-2D-601. General

A. The property factor, as defined in A.R.S. § 43-1140, for each trade or business of a taxpayer includes all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of the trade or business. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment, but does not include coin or currency.

B. A taxpayer shall exclude from the property factor property used in connection with the production of nonbusiness income.

C. Property used both in the regular course of a taxpayer's trade or business and in the production of nonbusiness income is included in the property factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the property factor will depend upon the facts of each case.

D. The property factor includes the average value of property includable in the factor.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-602. Property Used for the Production of Business Income

A. A taxpayer shall include in the property factor property that is used, available for use, or capable of being used during the tax period in the regular course of the taxpayer's trade or business.

B. A taxpayer shall include in the property factor property held as reserves or standby facilities or property held as a reserve source of materials. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor.

C. A taxpayer shall exclude from the property factor property or equipment under construction during the tax period, except inventoriable goods in process, until the property or equipment is used in the regular course of the taxpayer's trade or business. If the property or equipment is partially used in the regular course of the taxpayer's trade or business while under construction, the value of the property to the extent used shall be included in the property factor.

D. Property used in the regular course of the trade or business of the taxpayer remains in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for sale.

Example 1: The taxpayer closes its manufacturing plant in State X and holds the property for sale. The property remains vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

Example 2: Same as example one except that the property is rented until the plant is sold. The plant is included in the property factor until the plant is sold.

Example 3: The taxpayer closes its manufacturing plant and leases the building under a five-year lease. The plant is included in the property factor until the lease begins.

Example 4: The taxpayer operates a chain of retail grocery stores. Taxpayer closes Store A, which is then remodeled into three small retail stores such as a dress shop, dry cleaning, and barber shop, which are leased to unrelated parties. The property is removed from the property factor on the date the remodeling of Store A begins.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-603. Property Factor Numerator

The numerator of the property factor is the average value of the real and tangible personal property owned or rented by a taxpayer and used in this state during the tax period in the regular course of the taxpayer's trade or business.

1. Property in transit between locations of the taxpayer to which it belongs is considered to be at its destination for purposes of the property factor.
2. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices is included in the numerator according to the state of destination.
3. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that is located within and without this state during the tax period is determined for purposes of the numerator of the property factor on the basis of total time within the state during the tax period.
4. An automobile assigned to a traveling employee is included in the numerator of the property factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the property factor of the state in which the automobile is licensed.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-604. Valuation of Owned Property

A. Property owned by a taxpayer is valued at its original cost. Generally, "original cost" means the basis of the property for federal income tax purposes (before any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements to the property and partial disposition of the property, by reason of sale, exchange,

abandonment, or other similar event. However, capitalized intangible drilling and development costs are included in the property factor whether or not they have been expensed for either federal or state tax purposes.

Example 1: The taxpayer acquires a factory building in this state at a cost of $500,000 and, 18 months later, expends $100,000 for major remodeling of the building. The taxpayer files its return for the current taxable year on the calendar-year basis. The taxpayer claims a depreciation deduction in the amount of $22,000 with respect to the building on the return for the current taxable year. The value of the building includable in the numerator and the denominator of the property factor is $600,000; the depreciation deduction is not taken into account in determining the value of the building for purposes of the property factor.

Example 2: During the current taxable year, Corporation X merges into Corporation Y in a tax-free reorganization under the Internal Revenue Code. At the time of the merger, Corporation X owns a factory that it built five years earlier at a cost of $1,000,000. Corporation X has been depreciating the factory at the rate of two percent per year, and its basis to Corporation X, at the time of the merger is $900,000. Because the property is acquired by Corporation Y in a transaction in which, under the Internal Revenue Code, its basis to Corporation Y is the same as its basis to Corporation X, Corporation Y includes the property in its property factor at Corporation X's original cost, without adjustment for depreciation, $1,000,000.

Example 3: Corporation Y acquires the assets of Corporation X in a liquidation by which Corporation Y is entitled to use its stock cost as the basis of the Corporation X assets under Internal Revenue Code § 334(b)(2). Under these circumstances, Corporation Y's cost of the assets is the purchased price of the Corporation X stock, prorated over the Corporation X assets.

B. If the original cost of property is unascertainable, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

C. Inventory of stock of goods is included in the property factor in accordance with the valuation method used for federal income tax purposes.

D. Property acquired by gift or inheritance is included in the property factor at its basis for determining depreciation for federal income tax purposes.

Historical Note

Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-605. Valuation of Rented Property

A. Property rented by a taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the taxpayer uses the property that produces the subrents in the regular course of a trade or business of the taxpayer when it is producing the subrent income; accordingly, there is no reduction in its value. If the adjustment for subrents produces a negative or inaccurate value of rented property, the special provisions in R15-2D-902 apply.

Example 1: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Because the subrents are business income they are not deducted from rent paid by the taxpayer for the food market.

Example 2: The taxpayer rents a five-story office building primarily for use in its multistate business, uses three floors for its offices and subleases two floors to various other businesses and persons such as professionals and shops. The rental of the two floors is incidental to the operation of the taxpayer's trade or business. Because the subrents are business income, they are not deducted from the rent paid by the taxpayer.

Example 3: The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the 18 floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. Because the subrents are nonbusiness income they are deducted from the rent paid by the taxpayer.

B. "Annual rental rate" means the amount paid as rental for property for a 12-month period.

1. If property is rented for less than a 12-month period, the rent paid for the actual period of rental is the "annual rental rate" for the tax period.
2. If a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the taxpayer shall annualize the rent paid for the short tax period. If the rental term is for less than 12 months, the rent is not annualized beyond its term.

   Example 1: Taxpayer A ordinarily files its returns based on a calendar year and merges into Taxpayer B on April 30. The net rent paid under a lease with five years remaining is $2,500 a month. The rent for the tax period January 1 to April 30 is $10,000. After the rent is annualized the net rent is $30,000 ($2,500 x 12).

   Example 2: Same facts as in example one except that the lease would have terminated on August 31. In this case, the annualized rent is $20,000 ($2,500 x 8).
3. A taxpayer shall not annualize rent when the rental term is on a month-to-month basis.

C. "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by a taxpayer or for its benefit for the use of property and includes:

1. Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits, or otherwise.

   Example: A taxpayer, under the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of year pays the lessor one percent of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).
2. Any amount payable as additional rent or instead of rents, such as interest, taxes, insurance, repairs, or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities or janitor services. If a payment includes rent and other charges unsegregated, the

amount of rent is determined by consideration of the relative values of the rent and the other items.

Example 1: A taxpayer, under to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

Example 2: A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is $1,000 of which $700 is for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is $700.

D. "Annual rent" does not include:

1. Incidental day-to-day expenses, such as hotel or motel accommodations and daily rental of automobiles; and
2. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For purposes of this subsection, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, irrespective of the method of payment or how the consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

E. For purposes of the property factor, leasehold improvements are treated as property owned by a taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of leasehold improvements are included in the property factor.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-606. Averaging of Monthly Property Values

The Department may require or allow averaging of monthly values if that method is required to properly reflect the average value of a taxpayer's property for the tax period. The Department shall not require the averaging of monthly values if that method has a de minimis effect on a taxpayer's Arizona tax liability for the tax period.

1. Averaging of monthly values will generally be required if substantial fluctuations in the values of the property exist during the tax period or if property is acquired after the beginning of the tax period or disposed of before the end of the tax period.
   Example: The monthly value of the taxpayer's property is as follows:

January	$2,000	July	$15,000
February	$2,000	August	$17,000
March	$3,000	September	$23,000
April	$3,500	October	$25,000
May	$4,500	November	$13,000
June	$10,000	December	$2,000
Subtotal	$25,000	Subtotal	$95,000
		Total	$120,000

   The average monthly value of the taxpayer's property includable in the property factor for the income year is $10,000 (120,000 divided by 12).
2. Rented property is averaged by determining the net annual rental rate of the property.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-607. Consistency and Uniformity in Reporting

A. If a taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the valuation of property or in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose the nature and extent of the variance upon request by the Department.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 7. PAYROLL FACTOR

R15-2D-701. General

A. The payroll factor, as defined in A.R.S. § 43-1143, for each trade or business of a taxpayer includes the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

1. The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method.
   a. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued is deemed to have been paid.
   b. Notwithstanding the taxpayer's method of accounting, compensation paid to employees may, at the election of the taxpayer, be included in the payroll factor by use of the cash method if the taxpayer is required to report the compensation under that method for unemployment compensation purposes.
2. The compensation of any employee for activities that are connected with the production of nonbusiness income is excluded from the payroll factor.

   Example 1: The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used in the regular course of the taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of those wages is included in the payroll factor.

   Example 2: The taxpayer owns various securities that it holds as an investment separate and apart from its trade or business. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor.
3. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor.
4. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that the amounts constitute income to the recipient under the

Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, such as those employed in foreign countries, the determination of whether benefits or services would constitute income to the employees shall be made as though the employees were subject to the Internal Revenue Code.

B. Generally, a person is considered to be an employee if the person is treated by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, because certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who are not employees under the usual common-law rules, a taxpayer may establish that a person who is treated as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this Section.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-702. Payroll Factor Denominator
The denominator of the payroll factor is the total compensation paid by the taxpayer everywhere during the tax period. Therefore, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation is included in the denominator of the payroll factor.

Example: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition, the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is immune from taxation under the provisions of Public Law 86-272. The compensation paid to the employees in State C is assigned to State C where the services are performed (included in the denominator but not the numerator of the payroll factor) even though the taxpayer is not taxable in State C.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-703. Payroll Factor Numerator
The numerator of the payroll factor is the total compensation paid in this state during the tax period by the taxpayer for compensation. The tests in A.R.S. § 43-1144 for determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if the taxpayer includes compensation paid to employees in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report the compensation under this method for unemployment compensation purposes, the Department shall presume that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Article. The presumption may be overcome by evidence satisfactory to the Department that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-704. Compensation Paid in this State: Definitions
For the purpose of determining whether compensation is paid in this state under this Article and A.R.S. § 43-1144, the following definitions apply:

1. "Incidental" means any service that is temporary or transitory in nature or rendered in connection with an isolated transaction.
2. "Place from which the service is directed or controlled" means the site from which the power to direct or control is exercised by the taxpayer.
3. "Base of operations" means the site of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to:
   a. Receive instructions from the taxpayer,
   b. Receive communications from the taxpayer's customers or other persons,
   c. Replenish stock or other materials,
   d. Repair equipment, or
   e. Perform any other functions necessary to the exercise of the trade or profession.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-705. Consistency and Uniformity in Reporting

A. If the taxpayer departs from or modifies the treatment of compensation paid used in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the treatment of compensation paid, the taxpayer shall disclose the nature and extent of the variance upon request by the Department.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 8. SALES FACTOR

R15-2D-801. General

A. The following are provisions for determining "sales" under A.R.S. § 43-1145:

1. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of the goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. For purposes of this subsection, "gross receipts" means gross sales less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes (including sales taxes) are included as part of the receipts if the taxes are passed on to the buyer or included as part of the selling price of the product.
2. In the case of cost-plus-fixed-fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost plus the fee.
3. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency or the performance of equipment service contracts or research and

development contracts, "sales" includes the gross receipts from the performance of the services including fees, commissions, and similar items.

4. In the case of a taxpayer engaged in renting or licensing the use of real or tangible property, "sales" includes the gross receipts from these activities.
5. In the case of a taxpayer engaged in the sale, assignment, or licensing the use of intangible personal property such as patents and copyrights, "sales" includes the gross receipts from these activities.
6. If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

B. In some cases certain gross receipts are disregarded in determining the sales factor so that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See R15-2D-903.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-802. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 654, effective January 11, 2001 (Supp. 01-1).

R15-2D-803. Sales Factor Numerator
The numerator of the sales factor is the gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to the gross receipts are included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-804. Property Delivered or Shipped to a Purchaser within this State

A. Property is deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example: The taxpayer, with inventory in State A, sells $100,000 of its products to a purchaser with branch stores in several states, including this state. The order for the purchase is placed by the purchaser's central purchasing department, located in State B. The taxpayer ships $25,000 of the purchase order directly to purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

B. Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's warehouse in this state constitute property delivered or shipped to a purchaser within this state.

C. The term "purchaser within this state" includes the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

Example: A taxpayer in this state sells merchandise to a purchaser in State A. The taxpayer directs the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state according to purchaser's instructions. The sale by the taxpayer is "in this state."

D. If property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route, the produce is diverted to the purchaser's place of business in this state in which the taxpayer is subject to tax. The sale by the taxpayer is in this state.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-805. Sales of Tangible Personal Property to the United States Government
Sales of tangible personal property to the United States Government are not included in the numerator of the sales factor. For the purposes of this Section, only sales for which the United States Government makes direct payment to the seller under the terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to a prime contractor, who has the contract with the United States Government, do not constitute sales to the United States Government.

Example 1: A taxpayer contracts with General Services Administration to deliver X number of trucks that are paid for by the United States Government. The sale is a sale to the United States Government.

Example 2: The taxpayer, as a subcontractor to a prime contractor with the National Aeronautics and Space Administration, contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-806. Sales other than Sales of Tangible Personal Property in this State
This Section provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government). Under this Section, gross receipts are attributed to this state if the income-producing activity that gives rise to the receipts is performed wholly within this state. Also, gross receipts

are attributed to this state if, with respect to a particular item of income, the income-producing activity is performed within and without this state but the greater proportion of the income-producing activity is performed in this state rather than in any other state, based on costs of performance.

1. The term "income-producing activity" applies to each separate item of income and means the transactions and activities directly engaged in by a taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income-producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income-producing activity" includes but is not limited to the following:
   a. The rendering of personal services by employees or the use of tangible and intangible property by the taxpayer in performing a service;
   b. The sale, rental, leasing, licensing, or other use of real property;
   c. The rental, leasing, licensing, or other use of tangible personal property; and
   d. The sale, licensing, or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income-producing activity.
2. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.
3. The following are special provisions for determining when receipts from the income-producing activities described are in this state:
   a. Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.
   b. Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing, or other use of tangible personal property in this state is an income-producing activity separate from the rental, lease, licensing, or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease, or licensing period, gross receipts attributable to this state are measured by the ratio of the time the property is physically present or is used in this state to the total time the property is present or used anywhere during that period.
      Example: The taxpayer is the owner of 10 railroad cars. During the year, the total of the days during which each railroad car is present in this state is 50 days. The receipts attributable to the use of each of the railroad cars in this state are a separate item of income and shall be determined as follows:
      [(10 x 50)] ÷ (10 x 365)] x Total Receipts = Receipts Attributable to this State
   c. Gross receipts for the performance of personal services are attributable to this state to the extent the services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts from the performance of the services are attributable to this state only if the greater proportion of the services is performed in this state, based on costs of performance. Usually, if services are performed partly within and partly without this state, the services performed in each state constitute a separate income-producing activity; in such a case the gross receipts from the performance of services attributable to this state are measured by the ratio of the time spent performing the services in this state to the total time spent performing the services everywhere. Time spent performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to the gross receipts. Personal service not directly connected with the performance of the contract or other obligation, such as time expended in negotiating the contract, is excluded from the computations.
      Example 1: The taxpayer, a road show, gives theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.
      Example 2: The taxpayer, a public opinion survey corporation, conducts a poll by means of its employees in State X and in this state for the sum of $9,000. The project required 600 hours to obtain the basic data and prepare the survey report. The taxpayer expended 200 of the 600 hours in this state. The receipts attributable to this state are $3,000 [(200 ÷ 600) x $9,000].

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-807. Consistency and Uniformity in Reporting

A. If the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in Arizona returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

B. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose the nature and extent of the variance upon request by the Department.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 9. DEPARTURE FROM STANDARD APPORTIONMENT AND ALLOCATION PROVISIONS

R15-2D-901. General

A. A.R.S. § 43-1148 permits a departure from the allocation and apportionment provisions only in limited cases. A.R.S. § 43-1148 may be invoked only if unusual fact situations produce incongruous results under the apportionment and allocation provisions contained in A.R.S. Title 43, Chapter 11, Article 4.

B. If a departure from the allocation and apportionment provisions referred to in subsection (A) includes a change in the number of factors, the denominator of the apportionment ratio shall be adjusted to reflect the change.
Example 1: If two equally weighted factors are used, the denominator is two.

Example 2: If two factors are used and one of the factors is double weighted, the denominator is three.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-902. Special Provisions for the Property Factor
The following special provisions apply to the property factor of the apportionment formula:

1. If the subrents taken into account in determining the net annual rental rate under R15-2D-605 produce a negative or inaccurate value for any item of property, the Department shall require and the taxpayer shall use another method that will properly reflect the value of the rented property. In no case, however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for the property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.
   Example: The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer shall not be less than 2/10ths of the taxpayer's annual rental rate for the entire year, or $200,000.
2. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for the property.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

R15-2D-903. Special Provisions for the Sales Factor
The following special provisions apply to the sales factor of the apportionment formula:

1. If substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts are excluded from the sales factor. For example, gross receipts from the sale of a factory or plant are excluded.
2. Insubstantial amounts of gross receipts, arising from incidental or occasional transactions or activities, may be excluded from the sales factor, unless their exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from transactions such as the sale of office furniture, business automobiles, or other similar items.
3. If the income-producing activity with respect to business income from intangible personal property can be readily identified, the income is included in the denominator of the sales factor and, if the income-producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income-producing activity can be readily identified with respect to interest income received on deferred payments on sales of tangible property and income from the sale, licensing, or other use of intangible personal property. If business income from intangible property cannot readily be attributed to any particular income-producing activity of the taxpayer, the income is not assigned to the numerator of the sales factor for any state and is excluded from the denominator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures, or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends and interest shall be excluded from the denominator of the sales factor.
4. Items of income that are not subject to taxation under A.R.S. Title 43 or judicial decision is excluded from the sales factor. Examples of these items include controlled corporation dividends, gross-up dividends, Subpart F dividends, and interest from federal obligations.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 4973, effective October 5, 2001 (Supp. 01-4).

ARTICLE 10. CREDITS

R15-2D-1001. Environmental Technology Facility Tax Credit

A. A taxpayer claiming a tax credit for a qualified environmental technology facility under A.R.S. § 43-1169 shall retain records as required by A.R.S. § 42-1105. In addition, a taxpayer shall retain the following records to substantiate the tax credit:
1. A copy of the completed application packet submitted to the Arizona Department of Commerce.
2. The certificate of qualification issued by the Arizona Department of Commerce.
3. A copy of the memorandum of understanding entered into with the Arizona Department of Commerce.
4. A copy of each of the environmental technology annual qualification reports filed with the Arizona Department of Commerce.
5. A schedule showing the amount of credit claimed for each taxable year and the amount used for each taxable year.
6. The source documents that support the amount and date of capital expenditures made in constructing a qualified environmental technology facility.

B. A taxpayer shall retain the records specified in subsection (A) for the period in which the Department may issue a deficiency assessment for any taxable year that the taxpayer claims a credit or a carryover credit. A taxpayer may retain source documents in a machine-sensible format or through microfilm or microfiche, if the information is retrievable on request by Department personnel.

C. In addition to the recapture of previously used credits required by subsections (G) and (H) of A.R.S. § 43-1169, a taxpayer shall reduce the amount of any unused carryover credit related to amounts spent to construct a qualified environmental technology facility as follows:
1. If, before the facility is placed in service, the taxpayer abandons construction or changes plans in a manner that no longer qualifies as an environmental technology manufacturing, producing, or processing facility under A.R.S. § 41-1514.02, the total unused carryover credit is reduced to zero.
2. If, within five years after being placed in service, the facility ceases for any reason to operate as an environmental technology manufacturing, producing, or processing facility as described in A.R.S. § 41-1514.02, the total

unused carryover credit is reduced by the applicable percentage in A.R.S. § 43-1169(H).

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 4105, effective October 4, 2000 (Supp. 00-4).

R15-2D-1002. Renewable Energy Production Tax Credit

A. For each year for which an owner of a qualified energy generator plans to claim a renewable energy production tax credit, the owner shall file one of the following applications:
1. An initial application in accordance with subsection (B) for:
   a. Energy produced in 2011 for which an owner of a qualified energy generator plans to claim a credit on the 2011 tax return filed in 2012, and
   b. Energy produced after 2011 for which an owner of a qualified energy generator did not have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1164.03(G).
2. A renewal application in accordance with subsection (C) for an owner of a qualified energy generator that did have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1164.03(G).

B. An initial application shall include the following information:
1. The information required by A.R.S. § 43-1164.03(F).
2. The business structure of the applicant.
3. If the credit will be passed through to shareholders or partners, a list including the name, taxpayer identification number, and ownership percentage of each shareholder or partner. If the tax year end is other than December 31, and the shareholders or partners, or ownership percentages change, the applicant shall update the list for the tax year end by the due date of the applicant's Arizona return, including extensions.
4. The applicant's tax year end.
5. The name of the contact person, his or her title, telephone number and fax number.
6. If the applicant has any affiliates or subsidiaries, a list of the affiliates and subsidiaries, including the name, address, taxpayer identification number, and percentage of ownership. The applicant may substitute a federal Form 851, or other federal form with the required information, for this list.
7. Self-assigned name or identification number of the qualified energy generator.
8. Assessor's parcel number or numbers of the land on which the qualified energy generator is located or, if not available, the legal description.
9. The centrally valued property tax identification number for the personal property on the land.
10. The type of qualified energy resource used to generate electricity. If the qualified energy resource is biomass, the type of biomass.
11. The generating capacity of the qualified energy generator.
12. The number of kilowatt-hours of electricity produced for the calendar year.
13. Printouts for the calendar year from the production meter located at the qualified energy generator that:
    a. Measures the output from the qualified energy generator, and
    b. Provides the output information to a grid-tied energy management system.
14. A signed affidavit in which the applicant states that the information contained in the application is true and correct under penalty of perjury and that the qualified energy generator for which the applicant is claiming the credit did not produce electricity prior to 2011.

C. A renewal application shall include the information required by subsections (B)(1) through (6) and (B)(12) through (14). In addition, where the information required by subsections (B)(7) through (11) has changed since the prior year's application, the applicant shall provide the new information on the renewal application.

D. Copies of invoices or receipts from the electricity purchaser, verifying kilowatt-hours sold, shall be made available to the Department upon request.

E. If an owner owns more than one qualified energy generator, the owner shall submit a separate application for each qualified energy generator.

F. Each application shall be mailed separately in its own envelope by United States Postal Service Express Mail to: Arizona Department of Revenue, Renewable Energy Production Tax Credit Program, P.O. Box 25248, Phoenix, AZ 85002. Notwithstanding A.R.S. § 1-218(E)(1), the Department shall not accept applications through any other delivery method for purposes of this Section and A.R.S. § 43-1164.03.

G. For each initial application received in accordance with subsections (B) and (F), the Department shall assign a priority placement number that reflects the date and time on the Express Mail label, without regard to which time zone mailing took place.

H. If the Department receives more than one initial application in accordance with subsection (G) that it would assign the same priority placement number based on date and time on the Express Mail label, then the order received shall be determined by a random drawing of affected applications.

I. If the Department denies an application or approves a smaller amount of credit than the amount requested on the application, the Department's decision is an appealable agency action as defined in A.R.S. § 41-1092(3) and the applicant may appeal the decision under subsection (J) and A.R.S. Title 41, Chapter 6, Article 10.

J. To appeal a decision made under subsection (I), the applicant shall file a petition, in accordance with A.A.C. R15-10-105(B) and A.R.S. § 41-1092.03(B), within 30 days of receipt of the Department's decision.

K. For each decision made under subsection (I), the Department shall reserve the portion of the cap that the applicant would have been entitled to if the Department had approved the application in full, up to the generator cap limit, until the applicant waives or exhausts the appeal rights in subsection (J).

L. For the cap reserved under subsection (K), once the applicant waives or exhausts the appeal rights in subsection (J), the Department shall certify the cap to the next eligible applicant on the Credit Authorization List, until the full cap is certified.

M. In addition to the definitions provided in A.R.S. § 43-1164.03, unless the context provides otherwise, the following definitions apply to this Section and to implementation of A.R.S. § 43-1164.03:
1. "Cap" means the annual tax credit limit of $20 million in A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).
2. "Generator cap" means the annual tax credit limit of $2 million per qualified energy generator in A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).

Historical Note
New Section made by final rulemaking at 18 A.A.R. 603, effective April 8, 2012 (Supp. 12-1).

ARTICLE 11. REPEALED

R15-2D-1101. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5720, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4253, effective October 24, 2008 (Supp. 08-4).

R15-2D-1102. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5720, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4253, effective October 24, 2008 (Supp. 08-4).

R15-2D-1103. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5720, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4253, effective October 24, 2008 (Supp. 08-4).

R15-2D-1104. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5720, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4253, effective October 24, 2008 (Supp. 08-4).

R15-2D-1105. Repealed

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 5720, effective November 29, 2001 (Supp. 01-4). Repealed by exempt rulemaking at 14 A.A.R. 4253, effective October 24, 2008 (Supp. 08-4).

SUBCHAPTER E. EXPIRED

ARTICLE 1. EXPIRED

R15-2E-101. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2326, effective May 14, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2431, effective July 19, 2018 (Supp. 18-3).

ARTICLE 2. EXPIRED

R15-2E-201. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2326, effective May 14, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2431, effective July 19, 2018 (Supp. 18-3).

R15-2E-202. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2326, effective May 14, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2431, effective July 19, 2018 (Supp. 18-3).

R15-2E-203. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2326, effective May 14, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2431, effective July 19, 2018 (Supp. 18-3).

ARTICLE 3. EXPIRED

R15-2E-301. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2326, effective May 14, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2431, effective July 19, 2018 (Supp. 18-3).

SUBCHAPTER F. ESTATES AND TRUSTS

ARTICLE 1. RETURNS

R15-2F-101. Fiduciary Returns

A. In cases in which the gross income of the estate or trust is $5,000 or more, a copy of the will or trust instrument sworn to by the fiduciary as a true and complete copy must be filed with the fiduciary return of the estate or trust together with a statement by the fiduciary indicating the provisions of the will or trust instrument which in his opinion determine the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor respectively. However, if a copy of the will or trust instrument and statement relating to the provisions of the will or trust instrument have once been filed, they need not be filed again if the fiduciary return contains a statement showing when they were filed. If the trust instrument is amended in any way after such copies have been filed, a copy of the amendment must be filed with the return for the taxable year in which the amendment was made. In addition, the fiduciary must attach a statement to the copy of the amendment indicating the effect, if any, in his opinion of such amendment on the extent to which the income of the estate or trust is taxable to the estate or trust, the beneficiaries, or the grantor, respectively.

B. A certificate that all taxes due or to become due from the decedent or estate for whom a fiduciary acts have been paid or secured will not be issued unless all the following requirements are complied with:

1. A return must be filed by or on behalf of the decedent and for the estate for each taxable year in which the respective incomes of the decedent or estate exceeded the requirements for filing returns.
2. Although it is possible that no tax will become due from an estate for the year in which it is distributed, since all the income of the estate may be either properly paid or credited to the beneficiaries and hence deductible, a return for each year must be filed at the time the certificate is requested, regardless of the amount of gross or net income for such year. Such return must disclose all income to be distributed to beneficiaries upon the final distribution of the estate as well as income property paid or credited to beneficiaries during the year covered by the return and prior to final distribution.
3. A statement under declaration of perjury must be made by the fiduciary on the request for certificate, regarding the status of returns filed by or on behalf of the decedent or for the estate for the 4 taxable years immediately preceding the date a certificate is requested. The statement

required should indicate the years for which returns were filed or indicate the years for which the gross and net incomes were less than the amount necessary to require the filing of returns. If additional information is required, a supplemental statement will be requested.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2).

R15-2F-102. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 618, effective October 31, 2004 (Supp. 05-1).

R15-2F-103. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 618, effective October 31, 2004 (Supp. 05-1).

ARTICLE 2. IMPOSITION OF TAX ON ESTATES AND TRUSTS

R15-2F-201. Expired

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 5220, effective October 31, 2004 (Supp. 04-4).

SUBCHAPTER G. PARTNERSHIPS

ARTICLE 1. TAXATION OF PARTNERSHIPS

R15-2G-101. Partnerships

A. For purposes of this Section:
1. "Distributive share of the partnership" means a partner's share, as determined under the partnership agreement, of the items enumerated in A.R.S. § 43-1412.
2. "Arizona distributive share of the partnership" means the amount computed in subsection (A)(1), subject to the allocation and apportionment provisions of A.R.S. §§ 43-1131 through 43-1148.

B. A partnership is not subject to income tax but shall file a return of income for information purposes.

C. In computing taxable income:
1. A resident partner shall include the resident partner's distributive share of the partnership.
2. A nonresident partner shall include the nonresident partner's Arizona distributive share of the partnership.

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 2898, effective June 13, 2001 (Supp. 01-2).

R15-2G-102. Repealed

Historical Note
Recodified at 6 A.A.R. 2308, filed in the Office of the Secretary of State June 2, 2000 (Supp. 00-2). Section repealed by final rulemaking at 7 A.A.R. 2898, effective June 13, 2001 (Supp. 01-2).

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

43-102. Declaration of intent

A. It is the intent of the legislature by the adoption of this title to accomplish the following objectives:

1. To adopt the provisions of the federal internal revenue code relating to the measurement of adjusted gross income for individuals, to the end that adjusted gross income reported each taxable year by an individual to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in this title.

2. To adopt the provisions of the federal internal revenue code relating to the measurement of taxable income for corporations, trusts, estates and partnerships, to the end that taxable income reported each taxable year by a corporation, trust, estate or partnership to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in this title.

3. To achieve the results in paragraphs 1 and 2 by the application of the various provisions of the federal internal revenue code relating to the definitions of income, exceptions, deductions, accounting methods, taxation of individuals, corporations, trusts, estates and partnerships, basis and other pertinent provisions relating to gross income as defined, resulting in an amount called adjusted gross income for individuals and taxable income for corporations, trusts, estates and partnerships in the internal revenue code.

4. To impose on each resident of this state a tax measured by taxable income wherever derived.

5. To impose on each nonresident and each corporation with a business situs in this state a tax measured by taxable income which is the result of activity within or derived from sources within this state.

B. Nothing contained in this title shall be construed to require a taxpayer to include an item of income or permit a taxpayer to deduct an expense item more than once in computing Arizona taxable income.

43-325. Time for filing returns

Unless otherwise indicated:

1. Returns made on the basis of the calendar year shall be filed on or before the fifteenth day of April following the close of the calendar year.

2. Returns made on the basis of a fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.

3. For taxable years beginning from and after December 31, 2015, partnership returns are due on or before the fifteenth day of the third month following the close of the taxable year.

43-328. Returns filed by persons outside the United States

If it is determined by the department, under regulations prescribed by it, that by reason of an individual being outside the United States, it is impossible or impractical to perform any one or more of the acts specified in this title, then in determining under this title whether the act was performed within the prescribed time, in respect of any liability for taxes, interest or penalties affected by the failure to perform the act within such time and in determining the amount of any credit or refund, including interest, affected by such failure, there shall be disregarded the period such person was thus unable to conform to the provisions of this title.

43-401. Withholding tax; rates; election by employee

A. Except as provided by subsections B and H of this section, every employer at the time of the payment of wages, salary, bonus or other emolument to any employee whose compensation is for services performed within this state shall deduct and retain from the compensation an amount prescribed by tables adopted by the department.

B. An employer may voluntarily elect to not withhold tax during December by notifying:

1. The department on a form prescribed by the department.

2. The employer's employees in writing in a manner prescribed by the department.

C. If the amount collected and payable by the employer to the department in each of the preceding four calendar quarters did not exceed an average of one thousand five hundred dollars, the amount collected shall be paid to the department on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. If the amount exceeded one thousand five hundred dollars in each of the preceding four calendar quarters, the employer shall pay to the department the amount the employer deducts and retains pursuant to this section at the same time as the employer is required to make deposits of federal tax pursuant to section 6302 of the internal revenue code. On or before April 30, July 31, October 31 and January 31 each year, the employer shall reconcile the amounts payable during the preceding calendar quarter in a manner prescribed by the department, except that if the full amount collected and payable is paid timely to the department under this subsection, the employer may reconcile the amounts on or before May 10, August 10, November 10 and February 10 each year. The department by rule may allow and determine which employers qualify for annual payments of withholding taxes, with an annual report by the employer pursuant to section 43-412, subsection B, if the qualifying employer has established sufficient payment history to indicate that the employer is current and in good standing pursuant to standards established by rule. For any business that has not had a withholding certificate for the four preceding consecutive quarters, the quarterly average shall be computed in a manner prescribed by the department.

D. If an employer fails to make a timely monthly payment because prior to that reporting period it reported on a quarterly basis instead of on a monthly basis, the department shall notify the employer that it is out of compliance with this section. Notwithstanding section 42-1125, the department shall not assess a penalty against an employer for failing to make a timely monthly payment if the employer had filed and remitted all taxes due on a quarterly basis and brings all filings and payments into current compliance within thirty days after being notified by the department.

E. Each employee shall elect the amount authorized by subsection A of this section to be withheld for application toward the employee's state income tax liability. The election provided under this subsection shall be exercised by each employee, in writing on a form prescribed by the department. The election shall be made within five days of employment. Each employer shall notify the employees of the election made available under this subsection and shall have election forms available at all times. Each form shall be completed in triplicate, with one copy each for the department, the employer and the employee. The employer shall file a copy of each completed form with the department. Any employee failing to complete an election form as prescribed shall be deemed to have elected the withholding percentage prescribed by the department.

F. Before July 1 of each year, each employer who chooses to not withhold tax pursuant to subsection B of this section shall notify each employee that:

1. State income taxes will not be withheld from compensation in December.

2. The employee may elect to change the rate of withholding tax prescribed by this section to compensate for the resulting change in annual withholdings from the employee's compensation.

G. At an employee's written request, the employer may agree to reduce the amount withheld under this section by the amount of credit that the employee represents to the employer that the employee will qualify for and be

entitled to under sections 43-1088, 43-1089, 43-1089.01 and 43-1089.03. The employee's request must include the name and address of the qualifying charitable organization, qualified school tuition organization or public school. Within thirty days after agreeing to the employee's request, the employer shall reduce the withholding amount by the amount of the credit, but not below zero, prorated for the number of pay periods remaining in the employee's taxable year after the employee makes the request. If an employer agrees to reduce the withholding amount pursuant to this subsection, the following apply:

1. Within fifteen days after the end of each calendar quarter, the employer must pay the entire amount of the reduction in withholding tax for that quarter to the designated charitable organization, school tuition organization or public school. These payments are considered to be on the employee's behalf, and not the employer's, for the purposes of qualifying for the income tax credits under sections 43-1088, 43-1089, 43-1089.01 and 43-1089.03.

2. The employee is responsible and accountable for the accuracy and the amount of reduction in withholding tax and the payments to the charitable organization, school tuition organization or public school.

3. The employer is responsible and accountable to the charitable organization, school tuition organization or public school, to the employee and to the department for actually making the required payments.

4. Within thirty days after the end of each calendar year, or within fifteen days after the termination of employment, the employer must furnish to each electing employee a statement of the amount withheld and paid on behalf of the employee during that year.

H. An employer shall not withhold tax on the wages of the employer's nonresident employees who are in this state on a temporary basis for the purpose of performing disaster recovery from a declared disaster during a disaster period as defined in section 42-1130.

43-403. Employment excluded from withholding

A. No amount shall be deducted or retained from:

1. Wages or salary paid to an employee of a common carrier when such employee is a nonresident of this state as defined in section 43-104 and regularly performs services both within and without this state.

2. Wages paid for domestic service in a private home.

3. Wages paid for casual labor not in the course of the employer's trade or business.

4. Wages paid to part-time or seasonal employees whose services to the employer consist solely of labor in connection with the planting, cultivating, harvesting or field packing of seasonal agricultural crops, except such employees whose principal duties are operating any mechanically-driven device in such operations.

5. Wages or salary paid to a nonresident of this state who is:

(a) An employee of an individual, fiduciary, partnership, corporation or limited liability company having property, payroll and sales in this state, or of a related entity having more than fifty per cent direct or indirect common ownership.

(b) Physically present in this state for less than sixty days in a calendar year for the purpose of performing a service that will benefit the employer or the related entity. For purposes of determining the number of days of service in this state, days spent in the following activities are not included:

(i) In transit.

(ii) Engaging in personal activities.

(iii) Participating in training or professional development activities or attending meetings that are not directly connected to the Arizona operations of the employer or the related entity.

6. Wages or salary paid to a nonresident who is in this state on a temporary basis for the purpose of performing disaster recovery from a declared disaster during a disaster period as defined in section 42-1130.

B. In addition to the exemptions from the withholding provisions contained in subsection A of this section, because of the temporary nature of such employment, no amount shall be deducted or retained from wages paid to a nonresident of this state engaged in any phase of motion picture production when, prior to the time of payment of such wages, an application is made by the employer to the department, on forms prescribed by the department, for an exemption from the withholding provisions of this section and the department determines that the nonresident would be allowed a credit under section 43-1096 against all of the taxes upon such wages imposed by this chapter.

C. Subsection A, paragraph 5 of this section does not apply to a nonresident employee who is in this state solely for athletic or entertainment purposes.

D. Notwithstanding subsection A, paragraph 5 of this section:

1. The nonresident employee may elect to have withholding deducted in the manner prescribed by section 43-401, subsection E and the employer shall withhold tax pursuant to that election.

2. The employer may elect to withhold tax from the nonresident employee before the sixty-day limitation has elapsed.

43-432. Refund for excess withholding

A. When the total amount withheld under section 43-401 exceeds the amount of the tax on the employee's entire taxable income as computed under this title, the department shall, after auditing the annual return filed by the employee in accordance with chapter 3 of this title, and without requiring a filing of a refund claim as provided in section 42-1106, subsection A, refund the amount of the excess withheld, subject to setoff for debts pursuant to section 42-1122. Failure of the department to make such refund shall not limit the right of the taxpayer to file a claim for a refund as provided in chapter 6, article 1 of this title. If the excess tax withheld is less than one dollar, no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. In no event shall any excess be allowed as a credit against any tax accruing on a return filed for a year subsequent to the year during which such excess was withheld, the provisions of chapter 6 of this title notwithstanding.

B. The department may make separate refunds of withheld taxes upon request by a husband or wife who has filed a joint return, the refund payable to each spouse being proportioned to the gross earnings of each shown by the information returns filed by the employer or otherwise shown to the satisfaction of the department. If a taxpayer entitled to a refund under this subsection dies, the department may certify to the department of administration that the refund be made to the taxpayer's duly appointed executor, administrator or personal representative.

43-581. Payment of estimated tax; rules; penalty; forms

A. An individual who is subject to the tax imposed by section 43-1011 and whose Arizona gross income, as defined by section 43-1001, or as described by section 43-1091 in the case of nonresidents, for the taxable year exceeds $75,000 or $150,000 if a joint return is filed and whose Arizona gross income was greater than $75,000 in the preceding taxable year or $150,000 in the preceding taxable year if a joint return is filed shall make payments of estimated tax during the individual's taxable year. The amount of the payments of estimated tax shall be an amount that reasonably reflects a taxpayer's Arizona income tax liability that will be unpaid at the end of the taxpayer's taxable year. This amount shall be paid in four installments on or before the due dates established by the internal revenue code and shall total, when combined with the taxpayer's withholding tax, at least ninety percent of the tax due for the current taxable year or one hundred percent of the tax due for the preceding taxable year.

B. Any other individual who is subject to the tax imposed by this title may make payments of estimated tax during the individual's taxable year. The amount of any estimated tax payments for the taxable year shall be an amount that reasonably reflects a taxpayer's Arizona income tax liability that will be unpaid at the end of the taxpayer's taxable year.

C. For taxable years beginning from and after December 31, 2021, an entity that is treated as a partnership or S corporation for federal income tax purposes, that elects to pay the tax under section 43-1014 and whose taxable income for the taxable year exceeds $150,000 in the preceding taxable year shall make payments of estimated tax during the taxable year in a manner that is consistent with the manner prescribed in this section for individuals.

D. The department shall prescribe rules for the payments of estimated tax that shall provide for estimated payments in a manner similar to the manner prescribed in the internal revenue code.

E. If the taxpayer does not pay the estimated tax required by subsection A or C of this section on or before the prescribed dates, there is assessed and the department shall collect a penalty on the unpaid amount as prescribed by section 42-1125, subsection Q. Penalties or interest shall not be assessed or collected if either of the following applies:

1. The estimated tax payments made pursuant to this section are allowable exceptions under section 6654 of the internal revenue code.

2. The taxpayer's Arizona income tax liability due on the taxpayer's return is less than $1,000. For the purposes of this paragraph, "Arizona income tax liability due on the taxpayer's return" means the amount of tax due on the return minus the amount of Arizona income tax withheld and tax credits claimed by the taxpayer.

F. The department shall make available suitable forms and instructions to taxpayers who make estimated tax payments pursuant to this article.

43-942. Allocation in the case of controlled corporations

A. In any case of two or more corporations owned or controlled directly or indirectly by the same interests, the department may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such taxpayers, if it determines that such distributions, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such taxpayer.

B. For the purpose of enforcing this section, the department may require the filing of a combined report and such other information as it deems necessary unless the taxpayer has elected or is required to file a consolidated return pursuant to section 43-947.

43-961. Items not deductible in computation of taxable income

In computing taxable income no deduction shall in any case be allowed in respect of:

1. Personal, living or family expenses, except medical expenses allowed pursuant to section 43-1042.

2. With respect to financial institutions, as defined in section 6-101, that portion of any amount otherwise allowable as an interest expense deduction pursuant to the internal revenue code and determined by dividing the total of the amount of interest income received on obligations of the United States, this state or any political subdivision of this state by the sum of tax exempt interest as defined in section 103 of the internal revenue code plus gross income determined pursuant to the internal revenue code, and by multiplying the result thus obtained by any interest deduction allowed pursuant to section 163 or 591 of the internal revenue code without regard to the application of section 265 of the internal revenue code, and by adding to such result an amount equal to ten per cent of the total of the amount of interest income received on obligations of the United States, this state or any political subdivision of this state. The total amount disallowed by operation of this paragraph shall be reduced to the extent such disallowance would cause the tax payable by the financial institution under this title to exceed the total of gross income determined pursuant to the internal revenue code, plus the amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside this state, less the amount of interest income received on obligations of the United States.

3. Any amount paid or accrued on indebtedness incurred or continued to purchase a single premium life insurance or endowment contract. For the purposes of this paragraph, if substantially all the premiums of a life insurance or endowment contract are paid within a period of four years from the date on which such contract is purchased, such contract shall be considered a single premium life insurance or endowment contract.

4. Expenses attributable to Arizona gross income derived from illegal activities nor shall any deductions be allowed to any taxpayer on any of his Arizona gross income derived from any other activities which tend to promote or to further, or are connected or associated with, such illegal activities.

5. Any amount, not otherwise provided for by this section, that would otherwise be allowable as a deduction or an adjustment, which is allocable to one or more classes of income, whether or not any amount of income of that class or classes is received or accrued, and that is not required to be included in a person's Arizona adjusted gross income or Arizona taxable income.

43-1021. Addition to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the ordinary income portion of a lump sum distribution that was excluded from federal adjusted gross income pursuant to the special rule for individuals who attained fifty years of age before January 1, 1986 under Public Law 99-514, section 1122(h)(3).

3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside of this state, reduced, for taxable years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

5. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

6. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

7. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1081.01 or that is pollution control equipment for which a credit was taken before taxable year 2022 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

8. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02 or 43-1081.01 or that is pollution control equipment for which a credit was taken before taxable year 2022 and that is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02 or 43-1081.01 or for pollution control equipment, the section in which the credit was taken, as applicable.

9. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

10. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

11. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

12. The amount of a nonqualified withdrawal, as defined in section 15-1871, from a college savings plan established pursuant to section 529 of the internal revenue code that is made to a distributee to the extent the amount is not included in computing federal adjusted gross income, except that the amount added under this paragraph shall not exceed the difference between the amount subtracted under section 43-1022 in prior taxable years and the amount added under this section in any prior taxable years.

13. If a subtraction is or has been taken by the taxpayer under section 43-1024, in the current or a prior taxable year for the full amount of eligible access expenditures paid or incurred to comply with the requirements of the

Americans with disabilities act of 1990 (P.L. 101-336) or title 41, chapter 9, article 8, any amount of eligible access expenditures that is recognized under the internal revenue code, including any amount that is amortized according to federal amortization schedules, and that is included in computing taxable income for the current taxable year.

14. For taxable years beginning from and after December 31, 2017, the amount of any net capital loss included in Arizona gross income for the taxable year that is derived from the exchange of one kind of legal tender for another kind of legal tender. For the purposes of this paragraph:

(a) "Legal tender" means a medium of exchange, including specie, that is authorized by the United States Constitution or Congress to pay debts, public charges, taxes and dues.

(b) "Specie" means coins having precious metal content.

15. For taxable years beginning from and after December 31, 2021, the amount deducted by the partnership or S corporation pursuant to the internal revenue code for the amount paid to this state under section 43-1014 and for taxes that the department determines are substantially similar to the tax imposed under section 43-1014. This amount shall be reflected in the partner's or shareholder's Arizona gross income and the partnership's or S corporation's Arizona taxable income.

16. The amount of any motion picture production costs that was deducted pursuant to the internal revenue code for which a tax credit is claimed under section 43-1082.

43-1022. Subtractions from Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

1. The amount of exemptions allowed by section 43-1023.

2. Benefits, annuities and pensions in an amount totaling not more than $2,500 received from one or more of the following:

(a) The United States government service retirement and disability fund, the United States foreign service retirement and disability system and any other retirement system or plan established by federal law, except retired or retainer pay of the uniformed services of the United States that qualifies for a subtraction under paragraph 26 of this section.

(b) The Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan, an optional retirement program established by the Arizona board of regents under section 15-1628, an optional retirement program established by a community college district board under section 15-1451 or a retirement plan established for employees of a county, city or town in this state.

3. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 decreases the beneficiary's Arizona gross income.

4. Interest income received on obligations of the United States, minus any interest on indebtedness, or other related expenses, and deducted in arriving at Arizona gross income, that were incurred or continued to purchase or carry such obligations.

5. The excess of a partner's share of income required to be included under section 702(a)(8) of the internal revenue code over the income required to be included under chapter 14, article 2 of this title.

6. The excess of a partner's share of partnership losses determined pursuant to chapter 14, article 2 of this title over the losses allowable under section 702(a)(8) of the internal revenue code.

7. The amount allowed by section 43-1025 for contributions during the taxable year of agricultural crops to charitable organizations.

8. The portion of any wages or salaries paid or incurred by the taxpayer for the taxable year that is equal to the amount of the federal work opportunity credit, the empowerment zone employment credit, the credit for employer paid social security taxes on employee cash tips and the Indian employment credit that the taxpayer received under sections 45A, 45B, 51(a) and 1396 of the internal revenue code.

9. The amount of exploration expenses that is determined pursuant to section 617 of the internal revenue code, that has been deferred in a taxable year ending before January 1, 1990 and for which a subtraction has not previously been made. The subtraction shall be made on a ratable basis as the units of produced ores or minerals discovered or explored as a result of this exploration are sold.

10. The amount included in federal adjusted gross income pursuant to section 86 of the internal revenue code, relating to taxation of social security and railroad retirement benefits.

11. To the extent not already excluded from Arizona gross income under the internal revenue code, compensation received for active service as a member of the reserves, the national guard or the armed forces of the United States, including compensation for service in a combat zone as determined under section 112 of the internal revenue code.

12. The amount of unreimbursed medical and hospital costs, adoption counseling, legal and agency fees and other nonrecurring costs of adoption not to exceed $3,000. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife may not exceed $3,000. The subtraction under this paragraph may be taken for the costs that are described in this paragraph and that are incurred in prior years, but the subtraction may be taken only in the year during which the final adoption order is granted.

13. The amount authorized by section 43-1027 for the taxable year relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.

14. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code.

15. Any amount of qualified educational expenses that is distributed from a qualified state tuition program determined pursuant to section 529 of the internal revenue code and that is included in income in computing federal adjusted gross income.

16. Any item of income resulting from an installment sale that has been properly subjected to income tax in another state in a previous taxable year and that is included in Arizona gross income in the current taxable year.

17. For property placed in service:

(a) In taxable years beginning before December 31, 2012, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year computed as if the election described in section 168(k) of the internal revenue code had been made for each applicable class of property in the year the property was placed in service.

(b) In taxable years beginning from and after December 31, 2012 through December 31, 2013, an amount determined in the year the asset was placed in service based on the calculation in subdivision (a) of this paragraph. In the first taxable year beginning from and after December 31, 2013, the taxpayer may elect to subtract the amount necessary to make the depreciation claimed to date for the purposes of this title the same as it would have been if subdivision (c) of this paragraph had applied for the entire time the asset was in service. Subdivision (c) of this paragraph applies for the remainder of the asset's life. If the taxpayer does not make the election under this subdivision, subdivision (a) of this paragraph applies for the remainder of the asset's life.

(c) In taxable years beginning from and after December 31, 2013 through December 31, 2015, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been ten percent of the amount allowed pursuant to section 168(k) of the internal revenue code.

(d) In taxable years beginning from and after December 31, 2015 through December 31, 2016, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been fifty-five percent of the amount allowed pursuant to section 168(k) of the internal revenue code.

(e) In taxable years beginning from and after December 31, 2016, an amount equal to the depreciation allowable pursuant to section 167(a) of the internal revenue code for the taxable year as computed as if the additional allowance for depreciation had been the full amount allowed pursuant to section 168(k) of the internal revenue code.

18. With respect to property that is sold or otherwise disposed of during the taxable year by a taxpayer that complied with section 43-1021, paragraph 11 with respect to that property, the amount of depreciation that has been allowed pursuant to section 167(a) of the internal revenue code to the extent that the amount has not already reduced Arizona taxable income in the current or prior taxable years.

19. The amount contributed during the taxable year to college savings plans established pursuant to section 529 of the internal revenue code on behalf of the designated beneficiary to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted may not exceed:

(a) $2,000 per beneficiary for a single individual or a head of household.

(b) $4,000 per beneficiary for a married couple filing a joint return. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife may not exceed $4,000 per beneficiary.

20. The portion of the net operating loss carryforward that would have been allowed as a deduction in the current year pursuant to section 172 of the internal revenue code if the election described in section 172(b)(1)(H) of the internal revenue code had not been made in the year of the loss that exceeds the actual net operating loss carryforward that was deducted in arriving at federal adjusted gross income. This subtraction only applies to taxpayers who made an election under section 172(b)(1)(H) of the internal revenue code as amended by section 1211 of the American recovery and reinvestment act of 2009 (P.L. 111-5) or as amended by section 13 of the worker, homeownership, and business assistance act of 2009 (P.L. 111-92).

21. For taxable years beginning from and after December 31, 2013, the amount of any net capital gain included in federal adjusted gross income for the taxable year derived from investment in a qualified small business as determined by the Arizona commerce authority pursuant to section 41-1518.

22. An amount of any net long-term capital gain included in federal adjusted gross income for the taxable year that is derived from an investment in an asset acquired after December 31, 2011, as follows:

(a) For taxable years beginning from and after December 31, 2012 through December 31, 2013, ten percent of the net long-term capital gain included in federal adjusted gross income.

(b) For taxable years beginning from and after December 31, 2013 through December 31, 2014, twenty percent of the net long-term capital gain included in federal adjusted gross income.

(c) For taxable years beginning from and after December 31, 2014, twenty-five percent of the net long-term capital gain included in federal adjusted gross income. For the purposes of this paragraph, a transferee that receives an asset by gift or at the death of a transferor is considered to have acquired the asset when the asset was acquired by the transferor. If the date an asset is acquired cannot be verified, a subtraction under this paragraph is not allowed.

23. If an individual is not claiming itemized deductions pursuant to section 43-1042, the amount of premium costs for long-term care insurance, as defined in section 20-1691.

24. The amount of eligible access expenditures paid or incurred during the taxable year to comply with the requirements of the Americans with disabilities act of 1990 (P.L. 101-336) or title 41, chapter 9, article 8 as provided by section 43-1024.

25. For taxable years beginning from and after December 31, 2017, the amount of any net capital gain included in Arizona gross income for the taxable year that is derived from the exchange of one kind of legal tender for another kind of legal tender. For the purposes of this paragraph:

(a) "Legal tender" means a medium of exchange, including specie, that is authorized by the United States Constitution or Congress to pay debts, public charges, taxes and dues.

(b) "Specie" means coins having precious metal content.

26. Benefits, annuities and pensions received as retired or retainer pay of the uniformed services of the United States in amounts as follows:

(a) For taxable years through December 31, 2018, an amount totaling not more than $2,500.

(b) For taxable years beginning from and after December 31, 2018 through December 31, 2020, an amount totaling not more than $3,500.

(c) For taxable years beginning from and after December 31, 2020, the full amount received.

27. For taxable years beginning from and after December 31, 2020, the amount contributed during the taxable year to an achieving a better life experience account established pursuant to section 529A of the internal revenue code on behalf of the designated beneficiary to the extent that the contributions were not deducted in computing federal adjusted gross income. The amount subtracted may not exceed:

(a) $2,000 per beneficiary for a single individual or a head of household.

(b) $4,000 per beneficiary for a married couple filing a joint return. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife may not exceed $4,000 per beneficiary.

28. For taxable years beginning from and after December 31, 2020, Arizona small business gross income but only if an individual taxpayer has elected to separately report and pay tax on the taxpayer's Arizona small business adjusted gross income on the Arizona small business income tax return.

29. To the extent not already excluded from Arizona gross income under the internal revenue code, the value of virtual currency and non-fungible tokens the taxpayer received pursuant to an airdrop at the time of the airdrop. This paragraph may not be interpreted as providing a subtraction for any appreciation in value that occurs from holding the virtual currency after the initial receipt of the airdrop. For the purposes of this paragraph:

(a) "Airdrop" means the receipt of virtual currency through a means of distribution of virtual currency to the distributed ledger addresses of multiple taxpayers.

(b) "Non-fungible token" has the same meaning prescribed in section 43-1028.

(c) "Virtual currency" has the same meaning prescribed in section 43-1028.

30. The amount allowed as a subtraction by section 43-1028 for gas fees not already included in the taxpayer's virtual currency or non-fungible token basis.

43-1023. Exemptions for blind persons and persons sixty-five years of age or older

A. A taxpayer is allowed an exemption of $1,500:

1. For a taxpayer who is blind or if either the taxpayer's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the taxpayer's visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle not greater than twenty degrees.

2. For the taxpayer's spouse if a separate return is made by the taxpayer and if the spouse is blind as described in paragraph 1 of this subsection, has no Arizona adjusted gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made at the close of the taxable year of the taxpayer. If the spouse dies during the taxable year, the determination shall be made as of the time of the spouse's death.

B. A taxpayer is allowed an exemption of $2,300 for:

1. Each person sixty-five years of age or older regardless of the person's relationship to the taxpayer:

(a) If the taxpayer pays more than one-fourth of the total cost of maintaining that person in a nursing care institution or residential care institution licensed pursuant to title 36, chapter 4, or an assisted living facility provider of a type certified pursuant to title 11, chapter 2, article 7, if such payments exceed $800 in the taxable year.

(b) If the taxpayer otherwise makes payments exceeding $800 in the taxable year for home health care or other types of medical care.

2. For taxable years beginning from and after December 31, 2003, each birth for which a certificate of birth resulting in stillbirth has been issued pursuant to section 36-330 if the child otherwise would have been a member of the taxpayer's household. The taxpayer may claim the exemption under this paragraph only in the taxable year in which the stillbirth occurred.

C. For taxable years beginning from and after December 31, 1998, a resident taxpayer is allowed an exemption of $10,000 for each parent or ancestor of a parent of the taxpayer, who is sixty-five years of age or older, who requires assistance with activities of daily living and who lives in the taxpayer's principal residence for the entire taxable year, if the taxpayer pays more than one-half of the person's total support and maintenance costs. An exemption under this subsection is in lieu of an exemption under subsection B of this section for the same person.

D. An exemption under subsection B or C of this section is in lieu of claiming a credit for the same person under section 43-1073.01.

E. A taxpayer is allowed an exemption of $2,100:

1. If the taxpayer has attained sixty-five years of age before the close of the taxable year filing a separate or joint return and the taxpayer is not claimed as a dependent by another taxpayer.

2. For the taxpayer's spouse if the spouse has attained sixty-five years of age before the close of the taxable year, a joint return is filed and the spouse is not a dependent of another taxpayer.

43-1072. Earned credit for property taxes; residents sixty-five years of age or older; definitions

A. There shall be allowed to each resident a credit against the taxes imposed by this title for a taxable year for property taxes accrued or rent, or both, paid in that taxable year, in accordance with subsection B of this section, if all of the following apply:

1. Such resident attained the age of sixty-five years prior to or during the taxable year or such resident is a recipient of public monies under title 16 of the social security act, as amended.

2. Such person paid either property taxes or rent during the taxable year.

3. Such person either:

(a) Did not live with a spouse or any other persons and had an income from all sources in the taxable year of less than three thousand seven hundred fifty-one dollars.

(b) Lived with a spouse or one or more persons and the combined income from all sources in the taxable year of all persons residing in the residence was less than five thousand five hundred one dollars.

B. The credit allowed under this section is the amount of property taxes actually paid during the taxable year or the amount computed as follows, whichever is less:

1. For a person eligible under subsection A, paragraph 3, subdivision (a) of this section, according to the following table:

Household Income	Tax Credit
$ 0-1,750	$502
1,751-1,850	479
1,851-1,950	457
1,951-2,050	435
2,051-2,150	412
2,151-2,250	390
2,251-2,350	368
2,351-2,450	345
2,451-2,550	323
2,551-2,650	301
2,651-2,750	279
2,751-2,850	256
2,851-2,950	234
2,951-3,050	212
3,051-3,150	189

3,151-3,250	167
3,251-3,350	145
3,351-3,450	123
3,451-3,550	100
3,551-3,650	78
3,651-3,750	56

2. For a person eligible under subsection A, paragraph 3, subdivision (b) of this section, according to the following table:

Household Income	Tax Credit
$ 0-2,500	$502
2,501-2,650	479
2,651-2,800	457
2,801-2,950	435
2,951-3,100	412
3,101-3,250	390
3,251-3,400	368
3,401-3,550	345
3,551-3,700	323
3,701-3,850	301
3,851-4,000	279
4,001-4,150	256
4,151-4,300	234
4,301-4,450	212
4,451-4,600	189
4,601-4,750	167
4,751-4,900	145
4,901-5,050	123
5,051-5,200	100
5,201-5,350	78

5,351-5,500	56

C. The owner or lessor of property leased or rented solely for residential purposes, on request, shall furnish to the tenants of the property a written statement of the percentage of rental payments that are attributable to property tax for purposes of this section.

D. Disposition of the claimant's allowable credit shall be as provided below:

1. If the allowable amount of such claim exceeds the income taxes otherwise due on the claimant's income, the amount of the claim not used as an offset against income taxes, after audit by the department, shall be paid in the same manner as a refund granted under chapter 6, article 1 of this title. Refunds made pursuant to this paragraph are subject to setoff under section 42-1122.

2. The amount of any claim otherwise payable for credit for property taxes accrued or rent may be applied by the department against any liability outstanding on the books of the department against the claimant or against the claimant's spouse who was a member of the claimant's household in the taxable year.

E. The department shall make available suitable forms with instructions for claimants. Claimants who certify on the prescribed form that they have no income tax liability for the taxable year shall not be required to file an individual income tax return. The claim shall be in such form as the department may prescribe but shall require the social security numbers of persons who were allowed to claim as dependents for the taxes imposed by this title claimants filing pursuant to this section. The claimant shall also submit a copy of the claimant's property tax statement or a suitable representation of the statement as prescribed by the department. The department shall audit a sufficient number of claims to enforce the provisions of this chapter.

F. No claim with respect to property taxes or with respect to rent shall be allowed or paid unless the claim is actually filed on or before April 15 for the next preceding calendar year. The department may, upon request, grant for a period of not to exceed six months an extension of time for filing the claim.

G. Only one claimant per household per year shall be entitled to a tax credit pursuant to this section.

H. In this section, unless the context otherwise requires:

1. "Claimant" means a person who has filed a claim for credit under this section and was a resident of this state during the entire taxable year. In the case of a claim for rent, the claimant shall have rented property in this state during the entire taxable year except as otherwise provided by this section. If two individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to whom the claimant shall be. If they are unable to agree, the matter shall be referred to the department and its decision shall be final. If a homestead is occupied by two or more individuals and more than one individual is able to qualify as a claimant, and some or all of the qualified individuals are not related, the individuals may determine among them as to whom the claimant shall be. If they are unable to agree, the matter shall be referred to the department, and its decision shall be final.

2. "Gross rent" means rental paid for the right of occupancy of a homestead or space rental paid to a landlord for the parking of a mobile home. If the department is satisfied that the gross rent charge was paid solely for purposes of receiving a credit pursuant to this section, it shall not allow a claim.

3. "Homestead" means the principal dwelling, whether owned or rented by the claimant. "Homestead" may also include a mobile home and the land upon which it is located.

4. "Household" means the household of the claimant and such other persons as resided with the claimant in the claimant's homestead during the taxable year.

5. "Household income" means all income received by all persons of a household in a taxable year while members of the household.

6. "Income" means the sum of the following:

(a) Adjusted gross income as defined by the department.

(b) The amount of capital gains excluded from adjusted gross income.

(c) Nontaxable strike benefits.

(d) Nontaxable interest received from the federal government or any of its instrumentalities.

(e) Payments received from a retirement program paid by this state or any of its political subdivisions.

(f) Payments received from a retirement program paid by the United States through any of its agencies, instrumentalities or programs, except as provided in subsection I of this section.

(g) The gross amount of any pension or annuity not otherwise exempted except as provided in subsection I of this section.

7. "Property taxes" means property taxes levied on a claimant's homestead in this state in any taxable year. For purposes of this paragraph, property taxes are "levied" when the tax roll is delivered to the county treasurer for collection. If a claimant and the claimant's household own their homestead part of the taxable year and rent it or different homesteads for the rest of the same year, provided property taxes were levied on the homestead which was owned by the claimant and the claimant's household, such claimant shall be eligible for a credit pursuant to this section.

I. Income as defined in subsection H, paragraph 6, subdivisions (f) and (g) of this section shall not include monies received from cash public assistance and relief, relief granted under the provisions of this section, railroad retirement benefits, payments received under the federal social security act (49 Stat. 620), payments received under Arizona state unemployment insurance laws, payments received from veterans' disability pensions, payments received as workers' compensation, the gross amount of "loss of time" insurance, and gifts from nongovernmental sources or surplus foods or other relief in kind supplied by a governmental agency.

43-1083.02. Renewable energy production tax credit; definitions

A. A credit is allowed against the taxes imposed by this title for the production of electricity using renewable energy resources.

B. The taxpayer is eligible for the credit:

1. If the taxpayer holds title to a qualified energy generator that first produces electricity from and after December 31, 2010 and before January 1, 2021.

2. For ten consecutive calendar years beginning with the calendar year in which the qualified energy generator begins producing electricity that is transmitted through a transmission facility to a grid connection with a public or private electric transmission or distribution utility system. That same date applies with respect to that generator until the expiration of the ten-year period regardless of whether the generator is sold to another taxpayer or goes out of production before the expiration of the ten-year period.

C. The credit authorized by this section is based on the electricity that is generated by a qualified energy generator during a calendar year. For a taxpayer that files on a fiscal year basis, the credit shall be claimed on the return for the taxable year in which the calendar year ends.

D. Subject to subsection G of this section, the amount of the credit is:

1. One cent per kilowatt-hour of the first two hundred thousand megawatt-hours of electricity produced by a qualified energy generator in the calendar year using a wind or biomass derived qualified energy resource.

2. The following amounts for electricity produced by a qualified energy generator using a solar light derived or solar heat derived qualified energy resource:

(a) Four cents per kilowatt-hour in the first calendar year in which the qualified energy generator produces electricity.

(b) Four cents per kilowatt-hour in the second calendar year in which the qualified energy generator produces electricity.

(c) Three and one-half cents per kilowatt-hour in the third calendar year in which the qualified energy generator produces electricity.

(d) Three and one-half cents per kilowatt-hour in the fourth calendar year in which the qualified energy generator produces electricity.

(e) Three cents per kilowatt-hour in the fifth calendar year in which the qualified energy generator produces electricity.

(f) Three cents per kilowatt-hour in the sixth calendar year in which the qualified energy generator produces electricity.

(g) Two cents per kilowatt-hour in the seventh calendar year in which the qualified energy generator produces electricity.

(h) Two cents per kilowatt-hour in the eighth calendar year in which the qualified energy generator produces electricity.

(i) One and one-half cents per kilowatt-hour in the ninth calendar year in which the qualified energy generator produces electricity.

(j) One cent per kilowatt-hour in the tenth calendar year in which the qualified energy generator produces electricity.

E. To qualify for the purposes of this section, an energy generator may be located within one mile of an existing qualified energy generator only if the owner of the energy generator or the owner's corporate affiliates are not the owner of or the corporate affiliate of the owner of the existing qualified energy generator.

F. To be eligible for the credit under this section, the taxpayer must apply to the department, on a form prescribed by the department, for certification of the credit. The department shall only accept applications beginning January 2 through January 31 of the year following the calendar year for which the credit is being requested. The application shall include:

1. The name, address and social security number or federal employer identification number of the applicant.

2. The location of the taxpayer's facility that produces electricity using renewable energy resources for which the credit is claimed.

3. The amount of the credit that is claimed.

4. The date the qualified energy generator began producing commercially marketable amounts of electricity.

5. Any additional information that the department requires.

G. The department shall review each application under subsection F of this section and certify to the taxpayer the amount of the credit that is authorized. The amount of the credit for any calendar year shall not exceed two million dollars per facility that produces electricity using renewable energy resources. Credits are allowed under this section and section 43-1164.03 on a first come, first served basis. The department shall not authorize tax credits under this section and section 43-1164.03 that exceed in the aggregate a total of twenty million dollars for any calendar year. The first time that a taxpayer submits a qualified application for a qualified energy generator under subsection F of this section, the department shall add the taxpayer's name to a credit authorization list that is maintained in the order in which qualified applications are first received by the department on behalf of the qualified energy generator. A taxpayer's position on the credit authorization list shall be determined in the first year the taxpayer submits an application under subsection F of this section for the qualified energy generator. The taxpayer's position on the credit authorization list for a particular qualified energy generator shall remain unchanged for the ten years that are specified in subsection B, paragraph 2 of this section or until a year in which the taxpayer fails to submit a timely application under subsection F of this section or otherwise fails to comply with this section. If a taxpayer is removed from the credit authorization list for a qualified energy generator, the taxpayer may establish a new position on the credit authorization list in a subsequent year by filing a timely application for a qualified energy generator that qualifies for the credit. If an application is received that, if authorized, would require the department to exceed the twenty million dollar limit, the department shall grant the applicant only the remaining credit amount that would not exceed the twenty million dollar limit. After the department authorizes twenty million dollars in tax credits, the department shall deny any subsequent applications that are received for that calendar year. The department shall not authorize any additional tax credits that exceed the twenty million dollar limit even if the amounts that have been certified to any taxpayer were not claimed or a taxpayer otherwise fails to meet the requirements to claim the additional credit.

H. Co-owners of a qualified energy generator, including partners in a partnership, members of a limited liability company and shareholders of an S corporation as defined in section 1361 of the internal revenue code, may each claim the pro rata share of the credit allowed under this section based on ownership interest. The total of the credits allowed all such owners of the qualified energy generator may not exceed the amount that would have been allowed for a sole owner of the generator.

I. If the allowable tax credit for a taxpayer exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset taxes under this

title may be carried forward for not more than five consecutive taxable years as a credit against subsequent years' income tax liability.

J. The department shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate the purposes of this section.

K. For the purposes of this section:

1. "Biomass" means organic material that is available on a renewable or recurring basis, including:

(a) Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement.

(b) Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed coproducts and waste products, including fats, oils, greases, whey and lactose.

(c) Animal waste, including manure and slaughterhouse and other processing waste.

(d) Solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically-treated or painted wood wastes and wood contaminated with plastic.

(e) Crops and trees planted for the purpose of being used to produce energy.

(f) Landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process.

2. "Qualified energy generator" means a facility that has at least five megawatts generating capacity, that is located on land in this state owned or leased by the taxpayer, that produces electricity using a qualified energy resource and that sells that electricity to an unrelated entity, unless the electricity is sold to a public service corporation.

3. "Qualified energy resource" means a resource that generates electricity through the use of only the following energy sources:

(a) Solar light.

(b) Solar heat.

(c) Wind.

(d) Biomass.

43-1091. Gross income of a nonresident

A. In the case of nonresidents, Arizona gross income includes only that portion of federal adjusted gross income which represents income from sources within this state.

B. Income of a nonresident from the wages or salary received by the nonresident employee who is in this state on a temporary basis for the purpose of performing disaster recovery from a declared disaster during a disaster period as defined in section 42-1130 is not considered income from sources within this state.

43-1092. Intangible income of a nonresident

A. Except as provided in subsection B of this section, income of nonresidents from stocks, bonds, notes or other intangible personal property is not income from sources within this state unless the property has acquired a business situs within this state, except that if a nonresident buys or sells such property in this state or places orders with brokers within this state to buy or sell such property so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is income from sources within this state irrespective of the situs of the property. However, in no case shall transactions extending over a period of less than six months be deemed to constitute doing business in this state.

B. Any income received by nonresidents which is derived from a small business corporation making an election pursuant to section 43-1126 shall be considered taxable income of this state.

43-1101. Definitions

In this chapter, unless the context otherwise requires:

1. "Arizona gross income" of a corporation means its federal taxable income for the taxable year.

2. "Arizona taxable income" of a corporation means its Arizona gross income adjusted by the modifications specified in article 3 of this chapter.

3. "Domestic corporation" means a corporation created or organized in the United States or under the laws of the United States or of any state of the United States or the District of Columbia.

4. "Federal taxable income" means the taxable income of a corporation computed pursuant to the internal revenue code.

5. "Foreign corporation" means any of the following:

(a) A corporation which is not a domestic corporation.

(b) A domestic corporation with less than twenty per cent of its property, payroll and sales in the United States for the three year period ending with the close of the taxable year of the corporation preceding the current taxable year, or for such part of that period as the corporation has been in existence.

(c) A domestic corporation that has derived eighty per cent or more of its federal gross income for the three year period immediately preceding the close of the taxable year, or for such part of that period as the corporation has been in existence, from sources in the Commonwealth of Puerto Rico or any other possession of the United States except the Virgin Islands if sixty per cent, for taxable years beginning in calendar year 1984, or sixty-five per cent, for taxable years beginning after calendar year 1984, or more of the domestic corporation's federal gross income for that period, or part of that period as the corporation has been in existence, was derived from the active conduct of a trade or business in the Commonwealth of Puerto Rico or any other possession of the United States except the Virgin Islands.

6. "Net income" means Arizona taxable income.

7. "Person" and "taxpayer" means a corporation.

43-1123. Net operating loss; definition

A. For the purposes of this section, "net operating loss" means:

1. In the case of a taxpayer who has a net operating loss for the taxable year within the meaning of section 172(c) of the internal revenue code, the amount of the net operating loss increased by the subtractions specified in section 43-1122, except the subtraction allowed in section 43-1122, paragraph 10, and reduced by the additions specified in section 43-1121.

2. In the case of a taxpayer not described in paragraph 1 of this subsection, any excess of the subtractions specified in section 43-1122, except the subtraction allowed in section 43-1122, paragraph 10, over the sum of the Arizona gross income plus the additions specified in section 43-1121.

B. If for any taxable year the taxpayer has a net operating loss:

1. Such net operating loss shall be a net operating loss carryover for:

(a) Each of the five succeeding taxable years for net operating losses arising in taxable periods through December 31, 2011.

(b) Each of the twenty succeeding taxable years for net operating losses arising in taxable periods beginning from and after December 31, 2011.

2. The carryover in the case of each such succeeding taxable year, other than the first succeeding taxable year, shall be the excess, if any, of the amount of such net operating loss over the sum of the taxable income for each of the intervening years computed by determining the net operating loss subtraction for each intervening taxable year, without regard to such net operating loss or to the net operating loss for any succeeding taxable year.

C. The amount of the net operating loss subtraction shall be the aggregate of the net operating loss carryovers to the taxable year.

43-1125. Domestic international sales corporation

A domestic international sales corporation, commonly referred to as "disc", as defined in section 992 of the internal revenue code shall be taxed pursuant to the provisions of this chapter without regard to the provisions of sections 991 through 996 of the internal revenue code.

43-1127. Deferred exploration expenses

The amount of exploration expenses added to Arizona gross income pursuant to section 43-1121, paragraph 10 may be subtracted on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made for any taxable year shall be binding for that year.

43-1129. Amortization of expenses incurred in acquisition of pollution control devices; depreciation

A. Any taxpayer may elect to amortize the adjusted basis of any device, machinery or equipment for the collection and control at the source of atmospheric and water pollutants and contaminants based upon a period of sixty months. In computing Arizona taxable income, such amortization shall be allowed as a subtraction ratably over the period allowed under this subsection beginning with the month in which such device, machinery or equipment is completed or acquired and is placed in service by the taxpayer. This election shall be indicated by the taxpayer in an appropriate statement in the taxpayer's income tax return for the taxable year of the acquisition or completion and placement in service of such devices, machinery or equipment. An election to discontinue amortization with respect to the remainder of the amortization period is permitted and shall be indicated by an appropriate statement in the taxpayer's income tax return for the taxable year of discontinuance.

B. If the taxpayer does not elect to amortize pursuant to subsection A, there shall be allowed a deduction for normal exhaustion, wear and tear of property. The amount of such deduction shall be computed pursuant to the provisions of section 167 of the internal revenue code.

C. In determining the adjusted basis for the purposes of subsection A, such device, machinery or equipment upon certification by the department of environmental quality as a device, machinery or equipment for the collection and control at the source of atmospheric and water pollutants and contaminants shall include only an amount that is properly attributable to the construction, reconstruction, remodeling, installation or acquisition of such device, machinery or equipment as certified by the department of environmental quality.

43-1130. Amortization of the cost of child care facilities

A. At the election of any corporate taxpayer operating a child care facility for the purpose of making profit, any expenditure made to purchase, construct, renovate or remodel child care facilities or equipment shall be allowable as a subtraction ratably over a period of sixty months, beginning with the month in which the property is placed in service.

B. At the election of a taxpayer operating a child care facility within this state primarily for the children of employees of the taxpayer, any expenditure made to acquire, construct, renovate or remodel the child care facility or equipment is allowable as a subtraction ratably over a period of twenty-four months beginning with the month in which the property is placed in service.

C. The subtraction provided by this section shall be in lieu of any allowance for the exhaustion, wear and tear of such property used in a trade or business or of property held for the production of income, including a reasonable allowance for obsolescence pursuant to section 167 or 188 of the internal revenue code.

D. In the case of a partnership, joint venture or other pooled investment or joint ownership of child care property each participating corporate owner may claim the pro rata share of the subtraction based on the corporate ownership interest in the property. The total of the subtractions allowed all such owners of the property shall not exceed the amount that would have been allowed for a sole owner of the property.

43-1131. Definitions

As used in this article, unless the context otherwise requires:

1. "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

2. "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

3. "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

4. "Nonbusiness income" means all income other than business income.

5. "Sales" means all gross receipts of the taxpayer not allocated under this article.

6. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States and any foreign country or political subdivision thereof.

7. "Taxpayer" means any person subject to the tax imposed by this title.

43-1133. Taxability in other state

For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if either of the following applies:

1. In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax.

2. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

43-1135. Net rents and royalties

A. Net rents and royalties from real property located in this state are allocable to this state.

B. Net rents and royalties from tangible personal property are allocable to this state either:

1. If and to the extent that the property is utilized in this state.

2. In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

C. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

43-1136. Capital gains and losses

A. Capital gains and losses from sales of real property located in this state are allocable to this state.

B. Capital gains and losses from the sales of tangible personal property are allocable to this state if either:

1. The property had a situs in this state at the time of the sale.

2. The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

C. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

43-1137. Interest and dividends

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state unless the interest or dividend constitutes business income.

43-1138. Patent and copyright royalties

A. Patent and copyright royalties are allocable to this state either:

1. If and to the extent that the patent or copyright is utilized by the payer in this state.

2. If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

B. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

C. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

43-1139. Allocation of business income

A. Except as provided in subsection B of this section, the taxpayer shall elect to apportion all business income to this state for taxable years beginning from and after:

1. December 31, 2006 through December 31, 2007 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by a fraction, the numerator of which is two times the property factor plus two times the payroll factor plus six times the sales factor, and the denominator of which is ten.

2. December 31, 2007 through December 31, 2008 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by a fraction, the numerator of which is one and one-half times the property factor plus one and one-half times the payroll factor plus seven times the sales factor, and the denominator of which is ten.

3. December 31, 2008 through December 31, 2013 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus eight times the sales factor, and the denominator of which is ten.

4. December 31, 2013 through December 31, 2014 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by a fraction, the numerator of which is seven and one-half times the property factor plus seven and one-half times the payroll factor plus eighty-five times the sales factor, and the denominator of which is one hundred.

5. December 31, 2014 through December 31, 2015 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by a fraction, the numerator of which is five times the property factor plus five times the payroll factor plus ninety times the sales factor, and the denominator of which is one hundred.

6. December 31, 2015 through December 31, 2016 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by a fraction, the numerator of which is two and one-half times the property factor plus two and one-half times the payroll factor plus ninety-five times the sales factor, and the denominator of which is one hundred.

7. December 31, 2016 by either:

(a) Multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(b) Multiplying the income by the sales factor.

B. All business income of a taxpayer engaged in air commerce shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the revenue aircraft miles flown within this state for flights beginning or ending in this state and the denominator of which is the total revenue aircraft miles flown by the taxpayer's aircraft everywhere. This subsection applies to each taxpayer, including a combined group filing a combined return or an affiliated group electing to file a consolidated return under section 43-947, if fifty per cent or more of that taxpayer's gross income is derived from air commerce. For the purposes of this subsection:

1. "Air commerce" means transporting persons or property for hire by aircraft in interstate, intrastate or international transportation.

2. "Revenue aircraft miles flown" has the same meaning prescribed by the United States department of transportation uniform system of accounts and reports for large certificated air carriers (14 Code of Federal Regulations part 241).

43-1140. Property factor

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period other than real and tangible personal property used by either:

1. A foreign corporation which is not itself subject to the tax imposed by this title, unless the corporation is subject to the tax as a member of an Arizona affiliated group, as defined in section 43-947.

2. An insurance company that is exempt from tax under section 43-1201.

43-1141. Valuation of property

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

43-1142. Average value of property

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

43-1143. Payroll factor

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period other than compensation paid by either:

1. A foreign corporation which is not itself subject to the tax imposed by this title, unless the corporation is subject to the tax as a member of an Arizona affiliated group, as defined in section 43-947.

2. An insurance company that is exempt from tax under section 43-1201.

43-1144. Compensation paid in state

Compensation is paid in this state if any of the following apply:

1. The individual's service is performed entirely within this state.

2. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state.

3. Some of the service is performed in the state and the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

43-1145. Sales factor

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period other than sales of either:

1. A foreign corporation which is not itself subject to the tax imposed by this title, unless the corporation is subject to the tax as a member of an Arizona affiliated group, as defined in section 43-947.

2. An insurance company that is exempt from tax under section 43-1201.

43-1146. Situs of sales of tangible personal property

Sales of tangible personal property are considered to be in this state if the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the F.O.B. point or other conditions of the sale.

43-1147. Situs of sales of other than tangible personal property; definitions

A. Except as provided by subsection B of this section, sales, other than sales of tangible personal property, are in this state if either of the following applies:

1. The income-producing activity is performed in this state.

2. The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

B. For taxable years beginning from and after December 31, 2013, a multistate service provider may elect to treat sales from services as being in this state based on a combination of income-producing activity sales and market sales. If the election under this subsection is made pursuant to subsection C of this section, the sales of services that are in this state shall be determined for taxable years beginning from and after:

1. December 31, 2013 through December 31, 2014, by the sum of the following:

(a) Eighty-five percent of the market sales.

(b) Fifteen percent of the income-producing activity sales.

2. December 31, 2014 through December 31, 2015, by the sum of the following:

(a) Ninety percent of the market sales.

(b) Ten percent of the income-producing activity sales.

3. December 31, 2015 through December 31, 2016, by the sum of the following:

(a) Ninety-five percent of the market sales.

(b) Five percent of the income-producing activity sales.

4. December 31, 2016, by one hundred percent of the market sales.

C. A multistate service provider may elect to treat sales from services as being in this state under subsection B of this section as follows:

1. The election must be made on the taxpayer's timely filed original income tax return. The election is:

(a) Effective retroactively for the full taxable year of the income tax return on which the election is made.

(b) Binding on the taxpayer for at least five consecutive taxable years, regardless of whether the taxpayer no longer meets the percentage threshold of a multistate service provider during that time period, except as provided by paragraph 2 of this subsection. To continue with the election after five consecutive taxable years, the taxpayer must meet the qualifications to be considered a multistate service provider and renew the election for another five consecutive taxable years.

2. During the election period, the election may be terminated as follows:

(a) Without the permission of the department on the acquisition or merger of the taxpayer.

(b) With the permission of the department before the expiration of five consecutive taxable years.

D. For a multistate service provider under subsection E, paragraph 3, subdivision (b) of this section, an election under subsection B of this section is limited to the treatment of sales for educational services. For a multistate

service provider under subsection E, paragraph 3, subdivision (c) of this section, an election under subsection B of this section is limited to the treatment of sales for support services, the payment for which is a percentage of the sales for educational services generated by a regionally accredited institution of higher education.

E. For the purposes of this section:

1. "Income-producing activity sales" means the total sales from services that are sales in this state under subsection A of this section.

2. "Market sales" means the total sales from services and sales of intangibles, as defined in paragraph 3, subdivision (a) of this subsection, for which the purchaser received the benefit of the service or intangibles in this state.

3. "Multistate service provider" means any of the following:

(a) A taxpayer that derives more than eighty-five percent of its sales from services or sales from intangibles provided to purchasers who receive the benefit of the service or intangibles outside this state in the taxable year of election, and includes all taxpayers required to file a combined report pursuant to section 43-942 and all members of an affiliated group included in a consolidated return pursuant to section 43-947. In calculating the eighty-five percent, sales to students receiving educational services at campuses physically located in this state shall be excluded from the calculation. For the purposes of this subdivision, "sales from intangibles" means sales derived from credit and charge card receivables, including fees, merchant discounts, interchanges, interest and related revenue.

(b) A taxpayer that is a regionally accredited institution of higher education with at least one university campus in this state that has more than two thousand students residing on the campus, and includes all taxpayers required to file a combined report pursuant to section 43-942 and all members of an affiliated group included in a consolidated return pursuant to section 43-947.

(c) A taxpayer that has more than two thousand employees in this state and that derives more than eighty-five percent of its sales from support services provided to a regionally accredited institution of higher education, and includes all taxpayers required to file a combined report pursuant to section 43-942 and all members of an affiliated group included in a consolidated return pursuant to section 43-947.

4. "Received the benefit of the service in this state" means the services are received by the purchaser in this state. If the state where the services are received cannot be readily determined, the services are considered to be received at the home of the customer or, in the case of a business, the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering location cannot be determined, the services are considered to be received at the home or office of the customer to which the services were billed. In the case of a multistate service provider under paragraph 3, subdivision (c) of this subsection, the benefit of support services shall be deemed received at the billing address of the student to which the services relate.

5. "Sales for educational services" means tuition and fees required for enrollment and fees required for courses of instruction, transcripts and graduation.

43-1148. Apportionment by department

A. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable, any of the following:

1. Separate accounting, except with respect to an Arizona affiliated group, as defined in section 43-947.

2. The exclusion of any one or more of the factors.

3. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state.

4. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income, other than disallowing a properly elected consolidated return.

B. If the department, in the exercise of its discretion, determines that an adjustment is necessary pursuant to subsection A of this section, it may, in its discretion, authorize such an adjustment for a period of not less than one taxable year.

43-1149. Interpretation

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

43-1164.03. Renewable energy production tax credit; definitions

A. A credit is allowed against the taxes imposed by this title for the production of electricity using renewable energy resources.

B. The taxpayer is eligible for the credit:

1. If the taxpayer holds title to a qualified energy generator that first produces electricity from and after December 31, 2010 and before January 1, 2021.

2. For ten consecutive calendar years beginning with the calendar year in which the qualified energy generator begins producing electricity that is transmitted through a transmission facility to a grid connection with a public or private electric transmission or distribution utility system. That same date applies with respect to that generator until the expiration of the ten-year period regardless of whether the generator is sold to another taxpayer or goes out of production before the expiration of the ten-year period.

C. The credit authorized by this section is based on the electricity that is generated by a qualified energy generator during a calendar year. For a taxpayer that files on a fiscal year basis, the credit shall be claimed on the return for the taxable year in which the calendar year ends.

D. Subject to subsection G of this section, the amount of the credit is:

1. One cent per kilowatt-hour of the first two hundred thousand megawatt-hours of electricity produced by a qualified energy generator in the calendar year using a wind or biomass derived qualified energy resource.

2. The following amounts for electricity produced by a qualified energy generator using a solar light derived or solar heat derived qualified energy resource:

(a) Four cents per kilowatt-hour in the first calendar year in which the qualified energy generator produces electricity.

(b) Four cents per kilowatt-hour in the second calendar year in which the qualified energy generator produces electricity.

(c) Three and one-half cents per kilowatt-hour in the third calendar year in which the qualified energy generator produces electricity.

(d) Three and one-half cents per kilowatt-hour in the fourth calendar year in which the qualified energy generator produces electricity.

(e) Three cents per kilowatt-hour in the fifth calendar year in which the qualified energy generator produces electricity.

(f) Three cents per kilowatt-hour in the sixth calendar year in which the qualified energy generator produces electricity.

(g) Two cents per kilowatt-hour in the seventh calendar year in which the qualified energy generator produces electricity.

(h) Two cents per kilowatt-hour in the eighth calendar year in which the qualified energy generator produces electricity.

(i) One and one-half cents per kilowatt-hour in the ninth calendar year in which the qualified energy generator produces electricity.

(j) One cent per kilowatt-hour in the tenth calendar year in which the qualified energy generator produces electricity.

E. To qualify for the purposes of this section, an energy generator may be located within one mile of an existing qualified energy generator only if the owner of the energy generator or the owner's corporate affiliates are not the owner of or the corporate affiliate of the owner of the existing qualified energy generator.

F. To be eligible for the credit under this section, the taxpayer must apply to the department, on a form prescribed by the department, for certification of the credit. The department shall only accept applications beginning January 2 through January 31 of the year following the calendar year for which the credit is being requested. The application shall include:

1. The name, address and social security number or federal employer identification number of the applicant.

2. The location of the taxpayer's facility that produces electricity using renewable energy resources for which the credit is claimed.

3. The amount of the credit that is claimed.

4. The date the qualified energy generator began producing commercially marketable amounts of electricity.

5. Any additional information that the department requires.

G. The department shall review each application under subsection F of this section and certify to the taxpayer the amount of the credit that is authorized. The amount of the credit for any calendar year shall not exceed two million dollars per facility that produces electricity using renewable energy resources. Credits are allowed under this section and section 43-1083.02 on a first come, first served basis. The department shall not authorize tax credits under this section and section 43-1083.02 that exceed in the aggregate a total of twenty million dollars for any calendar year. The first time that a taxpayer submits a qualified application for a qualified energy generator under subsection F of this section, the department shall add the taxpayer's name to a credit authorization list that is maintained in the order in which qualified applications are first received by the department on behalf of the qualified energy generator. A taxpayer's position on the credit authorization list shall be determined in the first year the taxpayer submits an application under subsection F of this section for the qualified energy generator. The taxpayer's position on the credit authorization list for a particular qualified energy generator shall remain unchanged for the ten years that are specified in subsection B, paragraph 2 of this section or until a year in which the taxpayer fails to submit a timely application under subsection F of this section or otherwise fails to comply with this section. If a taxpayer is removed from the credit authorization list for a qualified energy generator, the taxpayer may establish a new position on the credit authorization list in a subsequent year by filing a timely application for a qualified energy generator that qualifies for the credit. If an application is received that, if authorized, would require the department to exceed the twenty million dollar limit, the department shall grant the applicant only the remaining credit amount that would not exceed the twenty million dollar limit. After the department authorizes twenty million dollars in tax credits, the department shall deny any subsequent applications that are received for that calendar year. The department shall not authorize any additional tax credits that exceed the twenty million dollar limit even if the amounts that have been certified to any taxpayer were not claimed or a taxpayer otherwise fails to meet the requirements to claim the additional credit.

H. Co-owners of a qualified energy generator, including corporate partners in a partnership and members of a limited liability company, may each claim the pro rata share of the credit allowed under this section based on ownership interest. The total of the credits allowed all such owners of the qualified energy generator may not exceed the amount that would have been allowed for a sole owner of the generator.

I. If the allowable tax credit for a taxpayer exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset taxes under this title may be carried forward for not more than five consecutive taxable years as a credit against subsequent years' income tax liability.

J. The department shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate the purposes of this section.

K. For the purposes of this section:

1. "Biomass" means organic material that is available on a renewable or recurring basis, including:

(a) Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement.

(b) Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed coproducts and waste products, including fats, oils, greases, whey and lactose.

(c) Animal waste, including manure and slaughterhouse and other processing waste.

(d) Solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically-treated or painted wood wastes and wood contaminated with plastic.

(e) Crops and trees planted for the purpose of being used to produce energy.

(f) Landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process.

2. "Qualified energy generator" means a facility that has at least five megawatts generating capacity, that is located on land in this state owned or leased by the taxpayer, that produces electricity using a qualified energy resource and that sells that electricity to an unrelated entity, unless the electricity is sold to a public service corporation.

3. "Qualified energy resource" means a resource that generates electricity through the use of only the following energy sources:

(a) Solar light.

(b) Solar heat.

(c) Wind.

(d) Biomass.

43-1411. Partnership, individual partnership liability

An individual carrying on a business in partnership shall be liable for income tax only in his individual capacity.

F.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON A.R.S. § 41-1033(H) INFORMATION RELATED TO DEPARTMENT OF PUBLIC SAFETY SUBSTANTIVE POLICY STATEMENT CVETFD-1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - PETITION

MEETING DATE: February 4, 2025

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

FROM: Council Staff

DATE: November 13, 2024

SUBJECT: **A.R.S. 41-1033(H) Information - Department of Public Safety**

Background

On September 16, 2024, GRRC staff received a correspondence from Amy Carlyle, Executive Director of Career Development, Inc. dba Northern Arizona Academy, requesting review of Department of Public Safety (Department) substantive policy statement CVETFD-1, which was published in Volume 28, Issue 38 of the Arizona Administrative Register on September 23, 2022. Specifically, Ms. Carlyle alleges, while Senate Bill (SB) 1630 and A.R.S. § 15-925 authorized the Department to adopt rules regulating the use of 11- to 15-person passenger vehicles, the Department has not done so.[1] Instead, the Department issued the above-referenced substantive policy statement which sets forth applicable requirements. Ms. Carlyle alleges, "[s]ubstantive [p]olicy [s]tatements cannot create rules or 'impose additional requirements or penalties on regulated parties.'" *See* Carlyle correspondence dated September 16, 2024.

Relevant Statutes

A.R.S. § 41-1033(H) allows a person to submit information to the Council "that alleges an existing agency practice or substantive policy statement may constitute a rule." Pursuant to A.R.S. § 41-1001(24) a "substantive policy statement" is defined as "a written expression which

[1] The Department indicates it is statutorily required to consult with the Student Transportation Advisory Council (STAC), established by A.R.S. § 28-3053 and pursuant to A.R.S. §§ 28-900(A) and 28-3228(B)(1) and (C), to implement rules. However, the STAC currently has no appointed members and cannot meet. As such, the Department has been unable to make rules for the regulation of 11- to 15- person passenger vehicles.

informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. *A substantive policy statement is advisory only.* A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and *does not impose additional requirements or penalties on regulated parties,* confidential information or rules made in accordance with this chapter." (Emphasis added). Alternatively, a "rule" is defined as "an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." *See* A.R.S. § 41-1001(21).

If the Council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule.

See A.R.S. § 41-1033(H).

Analysis

It appears the Department's substantive policy statement CVETFD-1 may constitute rules related to regulation of 11- to 15-person passenger vehicles in lieu of rules enacted through the rulemaking process. Section A of CVETFD-1 explicitly states, "[u]ntil such time as the Department can consult with the [STAC] and implement final rules in relation to the provisions in Senate Bill (SB) 1630 and A.R.S. § 15-925…, the Department's interim intent to authorize, inspect and enforce 11- to-15-person passenger vehicles (925 vehicles) and drivers will be in a manner consistent with other types of school buses and in accordance with this policy statement." Sections B through M of CVETFD-1 go on to outline the requirements for regulated parties with Section N indicating the CVETFD-1 will expire "upon the filing of final rules." As such, CVETFD-1 appears to impose additional requirements or penalties on regulated parties and is not merely advisory, falling outside the definition of a substantive policy statement. Instead, CVETFD-1 likely meets the definition of a rule as it sets forth the Department's current approach to, or opinion of, the requirements of federal or state statute and administrative rule or regulation.

Conclusion

Council staff believes Ms. Carlyle has provided sufficient information alleging the Department's substantive policy statement CVETFD-1 may constitute rules pursuant to A.R.S. § 41-1033(H). Therefore, Council staff recommends that this matter receive a hearing at a future Council meeting.

Amy Carlyle
PO BOX 125
Taylor, AZ 85939
928.536.9320
acarlyle@naacahrter.org

The Substantive Policy issued by the Arizona Department of Public Safety in the Arizona Administrative Register Volume 28 Issue 38 page 2499 is being used as a rule to impose additional requirements on regulated parties without following the requirements established by law to impose restrictions or guidelines on the use of 15 passenger motor vehicles. In short, because DPS has not assembled the Student Transportation Advisory Council, they are attempting to short-cut the process and impose rules on Charter schools and Districts using a Substantive Policy instead of following the protocol required by law to create rules.

State Bill 1630 passed in July 2020 states the following (highlighting and emphasis added):

15-925. School transportation; allowable vehicles

NOT WITHSTANDING ANY OTHER LAW, A SCHOOL DISTRICT OR CHARTER SCHOOL IN THIS STATE OR A PRIVATELY OWNED AND OPERATED ENTITY THAT IS CONTRACTED FOR COMPENSATION WITH A SCHOOL DISTRICT OR CHARTER SCHOOL IN THIS STATE MAY USE A MOTOR VEHICLE THAT IS DESIGNED TO CARRY AT LEAST ELEVEN AND NOT MORE THAN FIFTEEN PASSENGERS **OR** A MOTOR VEHICLE THAT IS DESIGNED AS A TYPE A SCHOOL BUS **OR** TYPE B SCHOOL BUS AS DEFINED BY THE DEPARTMENT OF PUBLIC SAFETY TO CARRY AT LEAST ELEVEN AND UP TO FIFTEEN PASSENGERS TO TRANSPORT STUDENTS TO OR FROM HOME OR SCHOOL ON A REGULARLY SCHEDULED BASIS IN ACCORDANCE WITH THE SAFETY RULES ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY PURSUANT TO SECTIONS 28-900 AND 28-3228.

Sec. 6. Section 28-900, Arizona Revised Statutes, is amended to read:

28-900. School transportation rules

A. The department of public safety in consultation with the STUDENT TRANSPORTATION advisory council established by section 28-3053 shall adopt rules as necessary to improve the safety and welfare of STUDENT passengers by minimizing the probability of accidents involving school buses and STUDENT passengers and by minimizing the risk of serious bodily injury to STUDENT passengers in the event of an accident.

B. The rules may include:

1. Minimum standards for the design and equipment of school buses THAT ARE DESIGNED FOR SIXTEEN OR MORE PASSENGERS.

2. Minimum standards for the periodic inspection and maintenance of school buses THAT ARE DESIGNED FOR SIXTEEN OR MORE PASSENGERS.

3. Procedures for the operation of school buses THAT ARE DESIGNED FOR SIXTEEN OR MORE PASSENGERS

4. MINIMUM STANDARDS FOR THE DESIGN AND EQUIPMENT OF MOTOR VEHICLES DESCRIBED IN SECTION 15-925 **THAT ARE SUBSTANTIALLY DIFFERENT** THAN THE MINIMUM STANDARDS PRESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

5. MINIMUM STANDARDS FOR THE PERIODIC INSPECTION AND MAINTENANCE OF MOTOR VEHICLES DESCRIBED IN SECTION 15-925.

6. PROCEDURES FOR THE OPERATION OF MOTOR VEHICLES DESCRIBED IN 7 SECTION 15-925.

7. Other criteria as deemed by the department of public safety and the STUDENT TRANSPORTATION advisory council to be necessary and appropriate to ensure the safe operation of school buses AND MOTOR VEHICLES THAT ARE DESCRIBED IN SECTION 15-925. ANY RULES ADOPTED PURSUANT TO THIS SECTION SHALL ALLOW FOR A VARIETY OF VEHICLES TO BE USED TO MEET THE NEEDS OF STUDENTS AND SYSTEMS OF VARYING SIZES AND LOCATIONS.

The Substantive policy statement issued in the Arizona Administrative Register Volume 28 Issue 38 page 2499 states requirements for motor vehicle usage that undermines and restricts the usage of motor vehicles as intended by the law. Furthermore, the requirements listed are not "substantially different than the minimum standards for school busses" nor were they created "in consultation with the Student Transportation Advisory Council."

Additionally, "The Administrative Procedure Act requires the publication of substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(14)). Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice. **Substantive policy statements are advisory only.** A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and **does not impose additional requirements or penalties on regulated parties"**

However, I was told by Sergeant Will Lunt of DPS, "DPS is charged with writing rules to govern the use of 11-15 passenger vehicles for school bus use. The rules cannot be finalized until the Student Transportation Advisory Council, which is addressed in SB1630, is appointed and functioning. Until the Council is up and running, **the Substantive Policy Statement is the rule**

that must be followed." It is my understanding that Substantive Policies are not rules, but internal guidelines.

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

Fwd: Petition for the Review of Substantive Policy Statement

Simon Larscheidt <simon.larscheidt@azdoa.gov> Wed, Nov 6, 2024 at 9:57 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

---------- Forwarded message ---------
From: Amy Carlyle <ACarlyle@naacharter.org>
Date: Tuesday, September 17, 2024 at 9:43:20 AM UTC-7
Subject: RE: Petition for the Review of Substantive Policy Statement
To: grrccomments@azdoa.gov <grrccomments@azdoa.gov>

I would like to add some additional information that I have obtained.

Specifically, the section of SB 1630 that DPS is ignoring is the following:

28-900 Authorizes DPS school transportation rules to include minimum standards for the:

a) design and equipment of 11-15 passenger vehicles that are **substantially different from the minimum standards for school buses**;

b) periodic inspection and maintenance of 11-15 passenger vehicles;

c) establishment of procedures for the operation of 11-15 passenger vehicles; and

d) to allow for a variety of vehicles to be used to meet the needs of students and systems of varying sizes and locations.

The statute clearly differentiates between Schol Busses that are designed for 16 or more passengers and Motor Vehicles described in section 15-925

The Substantive Policy Statement ignores this and instead says the motor vehicles described in section 15-925 must meet the same standards as school busses that are designed for 16 or more passengers. This is clearly the establishment of a rule that ignores the law enacted by SB1630.

Thank you,

Amy Carlyle

Executive Director

Career Development Inc dba Northern Arizona Academy

928.536.3920

From: Amy Carlyle
Sent: Monday, September 16, 2024 3:02 PM
To: grrccomments@azdoa.gov
Subject: Petition for the Review of Substantive Policy Statement

Hello,

[Quoted text hidden]

Arizona Department of Public Safety
Response to Petition on Substantive Policy Statement
A.R.S. § 15-925, 11 to 15 Student Transportation Passenger Vehicles
13 A.A.C. 13, School Buses
January 2025

"In an apparent effort to reduce transportation costs, some school districts and other school operators across the nation have purchased or leased full-sized passenger vans with capacities of 10 passengers or more (11 or more persons including the driver) in lieu of school buses; refer to Figure 1 *Van Descriptions* on Page 5. Since drivers of these vehicles are not required to possess a CDL, schools may be able to bypass a number of federal and state requirements. In addition to the lack of a CDL, drivers of vans may not receive specialized driver training, a criminal background check, a periodic medical fitness examination, drug and alcohol testing or ongoing checks for driving violations."[1] "Under federal law, any motor vehicle designed to carry 10 passengers (11 or more persons including the driver) is classified as a *bus*. A *bus* is classified as a *school bus* if it is used, or intended for use, in transporting students to and from school or school related activities."[1] Congress specified in 2005 that "…schools or school systems may not purchase or lease a new van designed to transport 10 to 14 passengers (11 to 15 persons including the driver) and not built to school bus or multifunction school activity bus standards, if the vehicle will be used by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school."[1] Federal law prohibits dealers from selling or leasing these vehicles if Federal Motor Vehicle Safety Standards for school buses or multifunction school activity-buses are not met. For some of these vehicles, the dealers/manufacturers apply a certification label stating *Not A School Bus*. The Department has encountered these *Not A School Bus* labels in viewing some of these vans. A.R.S. § 15-925 intends to regulate these vans and drivers to ensure the intended use of the van, the skill of the driver and conformance with safety standards.

[1] National Association of State Directors of Pupil Transportation Services, Position Paper: Non-conforming Vans Used for School Transportation, December 4, 2017.

The Department has two groups of stakeholders; One: the schools who operate the vehicles and Two: the children (and their parents) and other adults (e.g. teachers and teacher aides) who ride on those vehicles. The Department is required to inspect and certify the vehicles under A.R.S. § 15-925. The Department is also required under statute (A.R.S. §§ 28-900 and 28-3228) to consult with the Student Transportation Advisory Council (STAC) on *all matters* related to rulemaking.

As the Department indicated in its five-year review report to the Council earlier in 2024, the STAC currently has no appointed members and did not have enough members to form a quorum over the last several years to conduct any form of rulemaking. The Department stated in the report it sought legal advice on whether it could proceed with rulemaking without consulting the STAC. The legal opinion was the Department could not proceed. Without other alternatives, the Department then had to consider the policy statement as an interim intent to implement the statute until rulemaking could occur. Had the Department had the ability to bypass the STAC, it would likely have engaged in an Emergency Rulemaking to implement A.R.S. § 15-925 and then conduct a regular rulemaking right behind it; but that was not possible.

In response to Member Thorwald's comments during the five-year review meetings earlier this year, the Department has been proactive on the STAC over the last several years. Each year, the Department has reminded the Governor's Office of the need for a STAC and has multiple times provided a list of names totaling approximately 60 candidates from the schools who were interested in being appointed to the STAC. However, at the time of this statement there remains no members on the STAC.

When A.R.S. § 15-925 went into effect, the Department was contacted by schools to receive an inspection certification and other guidance as they wanted to purchase and put these vehicles and drivers into service as quickly as possible but did not want to purchase vehicles that may conflict with future administrative code. The Department cannot, in good faith, issue an inspection approval sticker to a vehicle or certify a driver without basing the decision on some set of criteria. The Department created the policy statement that set forth a

series of minimum, least intrusive criteria to certify these vehicles and drivers in a good and reasonable faith effort so the schools would not be delayed in purchasing and using those vehicles.

Regarding A.R.S. § 28-900(B)(4), the Department's interpretation is the statute creates a permissive statement for the Department to create standards for these vehicles that may be substantially different than other school buses. The Department did not interpret this passage to mean it is limited to only creating standards that are substantially different than other school buses. The Department believes there are elements in design, equipment and operation from other school buses that are appropriate, but it also recognizes these vehicles may be of a different design, requiring a different approach where appropriate. For example, the Department believes it is appropriate to paint these vehicles the traditional school-bus yellow as opposed to setting a substantially different paint color standard as the motoring public is accustomed to school-bus yellow. The Department further argues that setting rules that are only substantially different makes no logical sense; for example, tires must still meet tread depth and inflation standards, brakes still need to work, and rotors and pads still need to meet a minimum thickness, horns must still work, lights/lamps/turn signals must still work and so forth. If the Department could only write new rules that were substantially different, then that would mean tires, brakes, lights and the like could not be regulated as they would be duplicative in concept to other school buses. The Department does not believe the legislative intent was to allow the A.R.S. § 15-925 vehicles to travel on the roadway with bad tires, bad brakes and other non-functioning equipment and untrained drivers. As mentioned, the Department does believe there are differences that don't make sense to regulate equally and accounts for such in its policy; for example, these vehicles do not come equipped with roof and window emergency exits and therefore are logically not subject to that inspection.

The Department believes the drivers should meet a minimum standard. As with other school buses, the driver is responsible for the children and is often the only adult onboard with the children. Should an emergency

occur, the driver should still have the training to handle the situation and the physical ability to remove children, including special-needs children from harm.

Since the policy statement went into effect in 2022, the Department has not received any negative criticism until recently leading to the petition to the Council. Additionally, the Department has held open, in-person Question & Answer sessions with stakeholders at the 2023 and 2024 School Transportation Administrators of Arizona annual conference (https://taa-online.org). This conference includes school transportation administrators, school bus drivers and school bus mechanics. At both conferences, the Department did not receive any negative questions or concerns about the policy statement.

Collisions in school vehicles are not uncommon. In 2024 the Department investigated 500 collisions/incidents involving school buses. In 2020 there was a single vehicle fatality collision where an 11 to 15 passenger van with an unregulated driver overcorrected, rolling the van, ejecting and killing three students (one each from Duncan, Pima and Thatcher high schools). In 2023, the Gila River Leading Edge Academy with their 11 to 15 passenger van was involved in a head-on collision with multiple occupants receiving serious injuries.

Additionally, it is not uncommon for Department school bus inspectors to find school buses that do not meet safety standards; where the school was either unaware of the problem or were deficient in maintenance to correct a known problem. In 2024 the Department placed 1,323 school buses out-of-service for a total of 2,045 major safety violations.

If the Department cannot enforce a set of interim minimum standards until a STAC is appointed and formal rules promulgated, the Department would have no choice but to cease all inspection and certification of these vehicles and drivers and permit unregulated drivers and unregulated vehicles to transport Arizona's children to and from school. "The National Association of State Directors of Pupil Transportation Services believes that it is appropriate to require higher levels of safety in vehicles that transport children to and from

school and school-related activities….[and] supports the position that school children should be transported in school buses that provide the highest level of safety…[and] endorses the safety recommendation (H-99-22) of the National Transportation Safety Board…which states that the 50 states…should *Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school-related activities…meet the school bus structural standards or equivalent as set forth in 49 CFR 571.*"[2]

The Department errors on the side of safety first and cost secondarily asking itself the question: What are parents' expectations for the vehicles their children ride in and the drivers that transport them, and what is the price of a child's life?

Figure 1: *Van Descriptions*

An **Allowable Alternate Vehicle** meets all federal school bus crashworthiness standards, but does not meet conspicuity regulations or traffic control standards, i.e. flashing red lights, school bus yellow paint, and left side stop arm.

AAV

School Van

A **school van** is a regular van converted to full school bus specifications. Major alterations are made to the vehicle including cutting the roof off and welding in a full roll cage, along with dozens of other major alterations. When complete, the vehicle rides like a regular van, but meets the Federal Motor Vehicle Safety Standards for school buses.

A non-conforming van is a vehicle which does not conform to the applicable Federal Motor Vehicle Safety Standards for school buses. Most 15-passenger vans are little more than cargo vehicles converted to passenger application. Most do not even have the basic safety features of traditional passenger vehicles.

Non-conforming Van

[2] National Association of State Directors of Pupil Transportation Services, Position Paper: Non-conforming Vans Used for School Transportation, December 4, 2017.

3.1 A.A.C. Sections R18-9-A312(C)(2) and A.A.C. R18-9-A312(G) allow OWTF applicants to request a reduced setback for both conventional and alternative systems, either separately or in combination, when submitting an NOI for OWTFs.

3.2 According to Section R18-9-A312(G)(3), the Department reviews the request for a reduced setback and determines whether either of the following criteria have been demonstrated in the request:

3.2.1 The requested change achieves equal or better performance compared with the general permit requirement, or

3.2.2 The requested change addresses site or system conditions more satisfactorily than the requirements of this Article.

3.3 According to A.A.C. R18-9-A312(G)(4), approval of the request is left to the discretion of the Department.

3.4 According to A.A.C. R18-9-A312(G)(5) and (6), the Department must deny the requested change if any of the following are determined:

3.4.1 The requested change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.

3.4.2 The requested change fails to achieve equal or better performance compared to the general permit requirement.

3.4.3 The requested change fails to address site or system conditions more satisfactorily than the general permit requirement.

3.4.4 The requested change is insufficiently justified based on the information provided in the submittal.

3.4.5 The requested change requires excessive review time, research, or specialized expertise by the Department to act on the request.

3.4.6 The Department has justifiable cause to deny.

3.5 The Department must additionally consider the criteria in A.A.C. Section R18-9-A312(G)(7) if the requested reduced setback is for an OWTF or OWTFs described in one or more of the general permits in Section R18-9-E303 through R18-9-E322 (i.e., an alternative system), either separately or in combination with a conventional septic tank system described in A.A.C. Section R18-9-E302.

3.6 The criteria in A.A.C R18-9-A312(G)(7) are not applicable for a reduced setback for a conventional septic tank system described in A.A.C. R18-9-E302.

3.7 The Department may approve a request for a reduced setback for a conventional septic tank system described in A.A.C. Section R18-9-E302 using the criteria in Section R18-9-A312(G)(1) through (6).

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

Arizona Revised Statutes § 49-104(a)(1) provides authority for ADEQ to formulate policies, plans and programs to implement Title 49 to protect the environment. A.R.S. § 49-245 provides authority for ADEQ to promulgate rules for general APP.

5. A statement as to whether the substantive policy statement is a new statement or a revision:

This is a new substantive policy statement.

6. The agency contact person who can answer questions about the substantive policy statement:

Name:	Jon Rezabek
Address:	1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771- 8219
Email:	rezabek.jon@azdeq.gov
Website:	www.azdeq.gov

7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

Copies of this document are available at no cost on the Department's website: http://www.azdeq.gov. Hard copies may be obtained by contacting http://www.azdeq.gov/records-center the ADEQ Records Center, 8:30 a.m. to 4:30 p.m., Monday through Friday, 1110 W. Washington St., Phoenix, AZ 85007, (602) 771-4380. Cost is $0.25 per page.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF PUBLIC SAFETY

[M22-59]

1. Title of the Substantive Policy Statement and the number by which the substantive policy statement is referenced:

Title: Senate Bill 1630, 11 to 15 Student Transportation Passenger Vehicles

Policy No.: CVETFD-1

2. Date the substantive policy statement was issued and the effective date of the policy statement, if different from the issuance date:

Effective October 1, 2022

3. Summary of the contents of the substantive policy statement:

The policy establishes the following:

A. Until such time as the Department can consult with the Student Transportation Advisory Council and implement final rules in relation to the provisions in Senate Bill (SB) 1630 and A.R.S. § 15-925 (Item 4 below), the Department's interim intent to authorize, inspect and enforce 11-to-15-person passenger vehicles (925 vehicles) and drivers will be in a manner consistent with other types of school buses and in accordance with this policy statement. A rulemaking to amend school bus rules for SB1630 and all other necessary rule changes to modernize the decades-old rules is expected to be a lengthy process potentially exceeding a year. The Department recognizes the desire of schools to implement SB1630 as quickly as possible and this guidance is intended to assist schools in decision making moving forward.

B. Any Type A or Type B multifunction school activity bus in service prior to July 1, 2022 that is painted white may be used up to July 1, 2027 if equipped with an eight lamp, alternating flashing signal lamp as in R13-13-107(17) and a stop arm as in R13-13-107(31).

C. The removal of seats to meet the requirements will be prohibited and does not reclassify the vehicle.

D. Any vehicle that is not a Type A or Type B school bus shall meet the following: seating and crash protection requirements of 49 CFR 571.222; tires and wheels requirements of 49 CFR 393.75; color of school bus yellow requirements of the *National School Transportation Specifications and Procedures* by the National Congress on School Transportation; have a reflective strip at least 4 inches tall of alternating white and yellow 2-inch stripes set at a 45º angle the stretches across the lower rear of the vehicle and terminating no more than 4 inches from the outside edges of the vehicle; have on both sides of the vehicle the name of the school or the name of the private company in 3-inch block, black letters; Have on the rear of the vehicle the lettering *STUDENT TRANSPORTATION* in 4-inch block, black letters; have a vehicle number displayed in 3-inch block, black number either on the lower left or right area on the back of the vehicle or on the left or right side of the vehicle at a point forward of the centerline of the driver and front passenger doors; seatbelts installed and functioning in accordance with the manufacturer's specifications; be equipped with a high-mounted, amber (as opposed to white in R13-13-104(D)(32) flashing light centered on the rear roof line that is activated by the driver at railroad grade crossing which flashes at a rate equal to or greater than the turn signal rate with a visibility equivalent to a stop lamp as defined in A.R.S. § 28-939.

E. Drivers shall comply with R13-13-104(B)(9),(C),(D),(E), and R13-13-108 as applicable to a 925 vehicle. For example, if a 925 vehicle does not have a service door or clutch, that portion of the rules will not be applicable. However, if the 925 has a similar feature, performance of that feature may be required; for example, if the 925 vehicle is not equipped with a service door the driver may be asked to perform a similar function of opening and closing the passenger doors on the 925 vehicle or similarly rolling windows up/down.

F. Should not stop on a highway, interstate or primary roadway to load or unload passengers. Should stop in low-traffic volume areas with speed limits below 35 miles per hour. When loading or unloading the driver should place the vehicle in park, activate the four-way hazard flashers and the top/rear mounted flashing light described in Item 3(D) above.

G. For railroad grade crossings, the driver shall comply with R13-13-104(B)(15) with the requirement to operate the flashing light in Item 3(D) above. For vehicles without a service door in R13-13-104(B)(15)(d), the right front window shall be fully opened or fully rolled down.

H. The driver shall secure wheelchairs as specified in R13-13-105.

I. Any manufacturer-installed child safety locks on doors shall not be engaged.

J. The driver shall not remove the vehicle from park until all passengers are properly wearing their seatbelts or properly restrained. All passengers shall properly wear or use all safety belts.

K. The driver shall comply with the requirements in R13-13-102 with the exceptions of:

(1) Subsection 102(A)(3)(a)(v) and (A)(4) an Arizona commercial vehicle driver license is not required. The Department will require at a minimum an Arizona Class D driver license pursuant to the authorizing statute.

(2) Subsection 102(A)(5) a school bus (letter S) endorsement is not required pursuant to the authorizing statute.

L. Classroom and behind-the-wheel instructors shall comply with the requirements in R13-13-103. The Department will continue to require at a minimum a CDL for instructors.

M. Until such time as a passenger (letter P) endorsement can be placed on a driver license by MVD and until such time the Department's Student Transportation Unit can program their database to accept 925 driver certifications, the Department will provide a certified driver with a hardcopy and/or electronic credential the driver can retain/provide for verification of certification.

N. This substantive policy statement expires upon the filing of final rules.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

Fifty-fifth Legislature, Second Regular Session, 2022, Chapter 290, Senate Bill 1630, amending sections 15-383, 15-746, 15-922, 15-945, 28-900, 28-3053 and 28-3228, adding 15-925. Approved by the Governor June 13, 2022. Filed in the Office of the Secretary of State June 13, 2022.

5. A statement as to whether the substantive policy statement is a new statement or a revision:

This is a new statement.

6. The agency contact person who can answer questions about the substantive policy statement:

Name: William Lunt, Sergeant, for bus inspections or Kimberly Thomas, Supervisor, for driver certification.

Address: Arizona Department of Public Safety
P.O. Box 6638, MD3002
Phoenix, AZ 85005-6638

Specify Mail Drop 3002 for bus inspections or Mail Drop 3150 for driver certification.
Telephone: (602) 206-5093 for bus inspections or (602) 271-7389 for driver certification.
Email: wlunt@azdps.gov for bus inspections or kthomas@azdps.gov for driver certification.

7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

A copy of this statement for a fee of $9 is available from the Department through the public records request process at https://www.azdps.gov/services/public/records/public.

Senate Engrossed

school buses; student transportation; vehicles

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SENATE BILL 1630

AN ACT

AMENDING SECTIONS 15-383, 15-746 AND 15-922, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 9, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-925; AMENDING SECTIONS 15-945, 28-900, 28-3053 AND 28-3228, ARIZONA REVISED STATUTES; RELATING TO TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-383, Arizona Revised Statutes, is amended to read:

15-383. Insurance on school bus and other vehicle operators; authority of the governing board to purchase

A. The governing board may purchase public liability and property damage insurance covering school bus drivers while driving school buses AND OPERATORS OF VEHICLES DESCRIBED IN SECTION 15-925 WHILE DRIVING THOSE VEHICLES.

B. The governing board of any school district may require the operator of a school bus OR VEHICLE DESCRIBED IN SECTION 15-925 used for transportation of pupils attending schools in the district to carry public liability insurance in amounts not to exceed ~~twenty thousand dollars~~ $20,000 for personal injury to any one person, and ~~one hundred thousand dollars~~ $100,000 for personal injuries arising out of any one accident, covering any liability to which the operator may be subject on account of personal injuries to a passenger or other person caused or contributed to by an act of the operator while operating a school bus OR A VEHICLE DESCRIBED IN SECTION 15-925. If the policy of insurance is filed with and approved by the governing board of the school district, the governing board may increase the compensation otherwise payable to the operator by an amount equal to the cost to the operator of the insurance.

Sec. 2. Section 15-746, Arizona Revised Statutes, is amended to read:

15-746. School report cards

A. Each school shall distribute an annual report card that contains at least the following information:

1. A description of the school's regular, magnet and special instructional programs.

2. A description of the school's current academic goals.

3. A summary of each of the following:

(a) The results achieved by pupils enrolled at the school during the prior three school years as measured by the statewide assessment and the nationally standardized norm-referenced achievement test as designated by the state board and as reported in the annual report prescribed by section 15-743.

(b) Pupil progress on an ongoing and annual basis, showing the trends in gain or loss in pupil achievement over time in reading, language arts and mathematics for all years in which pupils are enrolled in the school district for an entire school year and for which this information is available.

(c) Pupil progress for pupils who are not enrolled in a district for an entire school year.

4. The attendance rate of pupils enrolled at the school as reflected in the school's average daily membership as defined in section 15-901.

5. The total number of incidents that occurred on the school grounds, at school bus stops, AT STOPS FOR VEHICLES DESCRIBED IN SECTION 15-925, on school buses, ON VEHICLES DESCRIBED IN SECTION 15-925 and at school-sponsored events and that required the contact of a local, county, tribal, state or federal law enforcement officer pursuant to section 13-3411, subsection F, section 13-3620, section 15-341, subsection A, paragraph 30 or section 15-515. The total number of incidents reported shall only include reports that law enforcement officers report to the school AND that are supported by probable cause. For the purposes of this paragraph, a certified peace officer who serves as a school resource officer is a law enforcement officer. A school may provide clarifying information if the school has a school resource officer on campus.

6. The percentage of pupils who have either graduated to the next grade level or graduated from high school.

7. A description of the social services available at the school site.

8. The school calendar, including the length of the school day and hours of operations.

9. The total number of pupils enrolled at the school during the previous school year.

10. The transportation services available.

11. A description of the responsibilities of parents of children enrolled at the school.

12. A description of the responsibilities of the school to the parents of the children enrolled at the school, including dates the report cards are delivered to the home.

13. A description of the composition and duties of the school council as prescribed in section 15-351 if such a school council exists.

14. For the most recent year available, the average current expenditure per pupil for administrative functions compared to the predicted average current expenditure per pupil for administrative functions according to an analysis of administrative cost data by the joint legislative budget committee staff.

15. If the school provides instruction to pupils in kindergarten programs and grades one through three, the ratio of pupils to teachers in each classroom where instruction is provided in kindergarten programs and grades one through three.

16. The average class size per grade level for all grade levels, kindergarten programs and grades one through eight. For the purposes of this paragraph, "average class size" means the weighted average of each class.

B. The department of education shall develop a standardized report card format that meets the requirements of subsection A of this section. The department shall modify the standardized report card as necessary on an annual basis. The department shall distribute to each school in this state a copy of the standardized report card that includes the required test scores for each school. Additional copies of the standardized report card shall be available on request.

C. After each school has completed the report card distributed to it by the department of education, the school, in addition to distributing the report card as prescribed in subsection A of this section, shall send a copy of the report card to the department. The department shall prepare an annual report that contains the report card from each school in this state.

D. The school shall distribute report cards to parents of pupils enrolled at the school, not later than the last day of school of each fiscal year, and shall present a summary of the contents of the report cards at an annual public meeting held at the school. The school shall give notice at least two weeks before the public meeting that clearly states the purposes, time and place of the meeting.

E. Beginning in fiscal year 2021-2022, the school report card prescribed by this section shall include a link to access the information required by section 15-747.

Sec. 3. Section 15-922, Arizona Revised Statutes, is amended to read:

15-922. Reporting duties of the school district; definition

A. Each school district, ~~shall~~ within twelve days after the first one hundred days or two hundred days in session, as applicable, SHALL certify to the superintendent of public instruction, in an electronic format as prescribed by the department of education, the following:

1. The daily route mileage of the school district in the current year. The route mileage shall not include more than ~~twenty~~ THIRTY miles each way to and from the school of attendance or to and from a pickup point on a regular transportation route to transport eligible students who reside in nonadjacent school districts.

2. The route mileage of the school district in the current year transporting eligible students for extended school year services in accordance with section 15-881.

3. The number of eligible students transported during the current year.

B. A school district shall meet the requirements of this section to receive state aid. The superintendent of public instruction may withhold a school district's apportionment of state aid if ~~it is determined by~~ the superintendent of public instruction DETERMINES that the school district is not complying with the requirements of this section. A school district may include in the calculation of daily route mileage any vehicle that

meets the definition of a school bus prescribed in this section OR ANY MOTOR VEHICLE DESCRIBED IN SECTION 15-925. The department of education shall not deny transportation funding or state aid for a school district that transports pupils in any vehicle that meets the definition of a school bus prescribed in this section OR ANY MOTOR VEHICLE DESCRIBED IN SECTION 15-925.

C. For the purposes of this article and section 15-901, "school bus" or "bus" means a school bus as defined in section 28-101, except that the passenger capacity standards prescribed in that section do not apply.

Sec. 4. Title 15, chapter 9, article 2, Arizona Revised Statutes, is amended by adding section 15-925, to read:

15-925. School transportation; allowable vehicles

NOTWITHSTANDING ANY OTHER LAW, A SCHOOL DISTRICT OR CHARTER SCHOOL IN THIS STATE OR A PRIVATELY OWNED AND OPERATED ENTITY THAT IS CONTRACTED FOR COMPENSATION WITH A SCHOOL DISTRICT OR CHARTER SCHOOL IN THIS STATE MAY USE A MOTOR VEHICLE THAT IS DESIGNED TO CARRY AT LEAST ELEVEN AND NOT MORE THAN FIFTEEN PASSENGERS TO TRANSPORT STUDENTS TO OR FROM HOME OR SCHOOL ON A REGULARLY SCHEDULED BASIS IN ACCORDANCE WITH THE SAFETY RULES AND REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY PURSUANT TO SECTIONS 28-900 AND 28-3228.

Sec. 5. Section 15-945, Arizona Revised Statutes, is amended to read:

15-945. Transportation support level

A. The support level for to and from school for each school district for the current year shall be computed as follows:

1. Determine the approved daily route mileage of the school district for the fiscal year prior to the current year.

2. Multiply the figure obtained in paragraph 1 of this subsection by one hundred eighty, or for a school district that elects to provide two hundred days of instruction pursuant to section 15-902.04, multiply the figure obtained in paragraph 1 of this subsection by two hundred.

3. Determine the number of eligible students transported in the fiscal year prior to the current year.

4. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 3 of this subsection to determine the approved daily route mileage per eligible student transported.

5. Determine the classification in column 1 of this paragraph for the quotient determined in paragraph 4 of this subsection. Multiply the product obtained in paragraph 2 of this subsection by the corresponding state support level for each route mile as provided in column 2 of this paragraph.

Column 1 Approved Daily Route Mileage per Eligible Student Transported	Column 2 State Support Level per Route Mile for Fiscal Year 2021-2022
0.5 or less	2.77
More than 0.5 through 1.0	2.27
More than 1.0	2.77

6. Add the amount spent during the prior fiscal year for bus tokens and bus passes for students who qualify as eligible students as defined in section 15-901.

B. The support level for academic education, career and technical education, vocational education and athletic trips for each school district for the current year is computed as follows:

1. Determine the classification in column 1 of paragraph 2 of this subsection for the quotient determined in subsection A, paragraph 4 of this section.

2. Multiply the product obtained in subsection A, paragraph 5 of this section by the corresponding state support level for academic education, career and technical education, vocational education and athletic trips as provided in column 2, 3 or 4 of this paragraph, whichever is appropriate for the type of district.

Column 1 Approved Daily Route Mileage per Eligible Student Transported	Column 2 District Type 02 or 03	Column 3 District Type 04	Column 4 District Type 05
0.5 or less	0.15	0.10	0.25
More than 0.5 through 1.0	0.15	0.10	0.25
More than 1.0	0.18	0.12	0.30

For the purposes of this paragraph, "district type 02" means a unified school district or an accommodation school that offers instruction in grades nine through twelve, "district type 03" means a common school district not within a high school district, "district type 04" means a common school district within a high school district or an accommodation school that does not offer instruction in grades nine through twelve and "district type 05" means a high school district.

C. The support level for extended school year services for pupils with disabilities is computed as follows:

1. Determine the sum of the following:

(a) The total number of miles driven by all buses of a school district while transporting eligible pupils with disabilities on scheduled routes from their residence to the school of attendance and from the school of attendance to their residence on routes for extended school year services in accordance with section 15-881.

(b) The total number of miles driven on routes approved by the superintendent of public instruction for which a private party, a political subdivision or a common or a contract carrier is reimbursed for bringing an eligible pupil with a disability from the place of the pupil's residence to a school transportation pickup point or to the school facility of attendance and from the school transportation scheduled return point or from the school facility to the pupil's residence for extended school year services in accordance with section 15-881.

2. Multiply the sum determined in paragraph 1 of this subsection by the state support level for the district determined as provided in subsection A, paragraph 5 of this section.

D. The transportation support level for each school district for the current year is the sum of the support level for to and from school as determined in subsection A of this section, the support level for academic education, career and technical education, vocational education and athletic trips as determined in subsection B of this section and the support level for extended school year services for pupils with disabilities as determined in subsection C of this section.

E. The state support level for each approved route mile, as provided in subsection A, paragraph 5 of this section, shall be adjusted by the growth rate prescribed by law, subject to appropriation.

F. School districts must provide the odometer reading for each bus as of the end of the current year and the total bus mileage during the current year.

G. A SCHOOL DISTRICT MAY INCLUDE ROUTE MILEAGE AND THE NUMBER OF RIDERS TO CALCULATE FUNDING PURSUANT TO THIS SECTION FOR TRANSPORTING ELIGIBLE STUDENTS USING MOTOR VEHICLES DESCRIBED IN SECTION 15-925.

Sec. 6. Section 28-900, Arizona Revised Statutes, is amended to read:

28-900. School transportation rules

A. The department of public safety in consultation with the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053 shall adopt rules as necessary to improve the safety and welfare of ~~school bus~~ STUDENT passengers by minimizing the probability of accidents involving school buses and ~~school bus~~ STUDENT passengers and by minimizing the risk of serious bodily injury to ~~school bus~~ STUDENT passengers in the event of an accident.

B. The rules may include:

1. Minimum standards for the design and equipment of school buses THAT ARE DESIGNED FOR SIXTEEN OR MORE PASSENGERS.

2. Minimum standards for the periodic inspection and maintenance of school buses THAT ARE DESIGNED FOR SIXTEEN OR MORE PASSENGERS.

3. Procedures for the operation of school buses THAT ARE DESIGNED FOR SIXTEEN OR MORE PASSENGERS.

4. MINIMUM STANDARDS FOR THE DESIGN AND EQUIPMENT OF MOTOR VEHICLES THAT ARE DESCRIBED IN SECTION 15-925 THAT ARE SUBSTANTIALLY DIFFERENT THAN THE MINIMUM STANDARDS PRESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

5. MINIMUM STANDARDS FOR THE PERIODIC INSPECTION AND MAINTENANCE OF MOTOR VEHICLES THAT ARE DESCRIBED IN SECTION 15-925.

6. PROCEDURES FOR THE OPERATION OF MOTOR VEHICLES DESCRIBED IN SECTION 15-925.

~~4.~~ 7. Other criteria as deemed by the department of public safety and the ~~school bus~~ STUDENT TRANSPORTATION advisory council to be necessary and appropriate to ensure the safe operation of school buses AND MOTOR VEHICLES THAT ARE DESCRIBED IN SECTION 15-925. ANY RULES ADOPTED PURSUANT TO THIS SECTION SHALL ALLOW FOR A VARIETY OF VEHICLES TO BE USED TO MEET THE NEEDS OF STUDENTS AND SYSTEMS OF VARYING SIZES AND LOCATIONS.

C. The rules shall provide, if applicable, minimum standards equal to or more restrictive than those adopted by the United States department of transportation in accordance with 23 United States Code and rules adopted pursuant to 23 United States Code.

D. Notwithstanding a rule adopted by the department of public safety with respect to exterior color of a school bus THAT IS DESIGNED FOR SIXTEEN OR MORE PASSENGERS, in order to reduce the interior temperature of a school bus, the exterior top of a school bus may be painted white, but the white area shall not extend beyond the center clearance lights, front and rear, and shall not extend below a line five inches above the top of the side windows.

E. An officer or employee of any school district OR CHARTER SCHOOL who violates any of the rules or who fails to include the obligation to comply with the rules in any contract executed by the officer or employee on behalf of ~~a~~ THE school district OR CHARTER SCHOOL is guilty of misconduct and is subject to removal from office or employment. Any person who operates a school bus OR MOTOR VEHICLE under contract with a school district OR CHARTER SCHOOL and who fails to comply with any of the rules is in breach of contract, and the school district OR CHARTER SCHOOL shall cancel the contract after notice and a hearing by the responsible officers of the school district OR CHARTER SCHOOL.

F. The department of public safety shall enforce the rules adopted pursuant to this section.

Sec. 7. Section 28-3053, Arizona Revised Statutes, is amended to read:

28-3053. Student transportation advisory council

A. The ~~school bus~~ STUDENT TRANSPORTATION advisory council is established consisting of ~~nine~~ THIRTEEN members appointed by the governor. The governor shall appoint the members as follows:

1. One member representing the department of public safety.

2. One member representing the state board of education.

3. ONE MEMBER REPRESENTING THE STATE BOARD FOR CHARTER SCHOOLS.

~~3.~~ 4. One member from a school district with a student count of less than six hundred IN A COUNTY WITH A POPULATION OF LESS THAN THREE HUNDRED THOUSAND PERSONS.

~~4.~~ 5. One member from a school district with a student count of six hundred or more but less than three thousand.

~~5.~~ 6. One member from a school district with a student count of MORE THAN three thousand ~~or more but less than ten thousand~~.

~~6. One member from a school district with a student count of ten thousand or more.~~

7. One member representing transportation administrators.

8. One member who is a certified school bus driver or school bus driver instructor.

9. One member representing a private sector school bus service provider OR A PRIVATE SECTOR STUDENT TRANSPORTATION SERVICE PROVIDER.

10. ONE MEMBER FROM A CHARTER SCHOOL WITH A STUDENT COUNT OF LESS THAN SIX HUNDRED.

11. ONE MEMBER FROM A CHARTER SCHOOL WITH A STUDENT COUNT OF MORE THAN SIX HUNDRED.

12. ONE MEMBER WITH EXPERTISE IN ELECTRIC VEHICLE FLEETS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE OR CHARGING MANAGEMENT SERVICES.

13. TWO PUBLIC MEMBERS.

B. The members shall serve staggered three-year terms unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

C. The ~~school bus~~ STUDENT TRANSPORTATION advisory council shall:

1. Meet at least TWICE annually.

2. Select a chairperson from its members.

3. Advise and assist the department of public safety in developing the rules required by sections 28-900 and 28-3228.

4. Recommend curricula for school bus driver safety and training courses required by section 28-3228.

5. Advise and consult with the department of public safety concerning matters related to the certification of school bus drivers and the safety of school buses AND VEHICLES DESCRIBED IN SECTION 15-925.

6. ADVISE AND CONSULT WITH THE DEPARTMENT OF PUBLIC SAFETY CONCERNING MATTERS RELATED TO MODERNIZING AND INNOVATING K-12 STUDENT TRANSPORTATION TO REDUCE TRANSPORTATION BARRIERS FOR STUDENTS, INCREASE ACCESS TO PUBLIC SCHOOL OPTIONS AND PROVIDE MORE TRANSPORTATION OPTIONS FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS, INCLUDING ELECTRIC TRANSPORTATION.

7. ADVISE AND CONSULT WITH THE DEPARTMENT OF ADMINISTRATION CONCERNING PURCHASING STRATEGIES TO MAXIMIZE TRANSPORTATION RESOURCES AND FIND EFFICIENCIES TO MODERNIZE AND PROPERLY SIZE TRANSPORTATION VEHICLES AND SYSTEMS.

~~6.~~ 8. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide written notice to each person on the list at least fifteen days before the date on which the meeting is to be held. The notice shall be sent by mail or electronic means to the party's last address of record with the council or by any other method reasonably calculated to effect actual notice to any party expressing interest in the council's activities. Written notice by electronic means is effective when transmitted. For other methods written notice is effective on receipt or five days after the date shown on the postmark stamped on the envelope, whichever is earlier.

D. Members of the ~~school bus~~ STUDENT TRANSPORTATION advisory council are not eligible to receive compensation or reimbursement for expenses.

Sec. 8. Section 28-3228, Arizona Revised Statutes, is amended to read:

28-3228. School bus drivers; student transportation requirements; rules; cancellation of certificate

A. A person shall not operate a school bus ~~transporting~~ THAT IS DESIGNED FOR SIXTEEN OR MORE PASSENGERS AND THAT TRANSPORTS school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety. A PERSON SHALL NOT OPERATE A VEHICLE AUTHORIZED PURSUANT TO SECTION 15-925 TO TRANSPORT SCHOOL CHILDREN UNLESS THE PERSON POSSESSES THE APPROPRIATE LICENSE CLASS FOR THE SIZE OF THE VEHICLE BEING OPERATED, A SCHOOL BUS CERTIFICATE THAT IS ISSUED BY THE DEPARTMENT OF PUBLIC SAFETY AND A VALID FINGERPRINT CLEARANCE CARD PURSUANT TO SUBSECTION D OF THIS SECTION.

B. To be certified as a school bus driver FOR A VEHICLE THAT IS DESIGNED FOR SIXTEEN OR MORE PASSENGERS, a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of public safety in consultation with the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053.

2. Complete an initial instructional course on school bus driver safety and training, including behind the wheel training.

C. The department of public safety in consultation with the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053 shall adopt rules that establish minimum standards for the certification of school bus drivers AND DRIVERS OF OTHER VEHICLES DESCRIBED IN SECTION 15-925. In cooperation with local school districts AND CHARTER SCHOOLS, the department of public safety shall provide for school ~~bus driver~~

TRANSPORTATION safety and training courses. The standards established shall:

1. Include requirements concerning moral character, knowledge of ~~school bus operation~~ OPERATING A SCHOOL BUS OR A VEHICLE DESCRIBED IN SECTION 15-925, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus OR VEHICLE DESCRIBED IN SECTION 15-925 or that might endanger the health or safety of ~~school bus~~ passengers, knowledge of first aid, establishment of school bus AND OTHER VEHICLE safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of public safety and the ~~school bus~~ STUDENT TRANSPORTATION advisory council established by section 28-3053 prescribe for the protection of the public.

2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the ability of the applicant to safely operate a school bus OR VEHICLE DESCRIBED IN SECTION 15-925.

3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

4. Require the applicant to possess a commercial driver license issued by the department, except that:

(a) Notwithstanding subsection A of this section the applicant may possess a commercial driver license issued by another state if the applicant will be driving a school bus for a school district that is adjacent to that state.

(b) AN APPLICANT TO DRIVE A VEHICLE DESCRIBED IN SECTION 15-925 DOES NOT NEED TO POSSESS OR OBTAIN A COMMERCIAL DRIVER LICENSE.

D. Each person who applies for a school bus driver certificate shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 and shall submit an identity verified fingerprint card as described in section 15-106 that the department of public safety shall use to process the fingerprint clearance card as outlined in section 15-106.

E. A person who is issued a school bus driver certificate shall maintain a valid identity verified fingerprint clearance card for the duration of any school bus driver certification period.

F. The department of public safety shall suspend a school bus driver certificate if the fingerprint clearance card is invalid, suspended, canceled or revoked.

G. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

H. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

I. The department of public safety shall enforce the rules adopted pursuant to this section.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.

2. "Appealable agency action" has the same meaning prescribed in section 41-1092.

3. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.

4. "Code" means the Arizona administrative code, which is published pursuant to section 41-1011.

5. "Committee" means the administrative rules oversight committee.

6. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

7. "Council" means the governor's regulatory review council.

8. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.

9. "Emergency rule" means a rule that is made pursuant to section 41-1026.

10. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.

11. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.

12. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

13. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

14. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, change, reduction, modification or amendment of a license, including an existing permit,

certificate, approval, registration, charter or similar form of permission, approval or authorization obtained from an agency by the holder of a license.

15. "Licensing decision" means any action by an agency to grant or deny any request for permission, approval or authorization issued in response to any request from an applicant for a license or to the holder of a license to exercise authority within the scope of the license.

16. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

17. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

18. "Preamble" means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.

(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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.

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

(vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

19. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

20. "Register" means the Arizona administrative register, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to section 41-1011.

21. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

22. "Rulemaking" means the process to make a new rule or amend, repeal or renumber a rule.

23. "Small business" means 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. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

24. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

15-925. School transportation; allowable vehicles

Notwithstanding any other law, a school district or charter school in this state or a privately owned and operated entity that is contracted for compensation with a school district or charter school in this state may use a motor vehicle that is designed to carry at least eleven and not more than fifteen passengers or a motor vehicle that is designed as a type A school bus or type B school bus as defined by the department of public safety to carry at least eleven and up to fifteen passengers to transport students to or from home or school on a regularly scheduled basis in accordance with the safety rules adopted by the department of public safety pursuant to sections 28-900 and 28-3228.

28-3053. Student transportation advisory council

A. The student transportation advisory council is established consisting of the following members appointed by the governor:

1. One member representing the department of public safety.

2. One member representing the state board of education.

3. One member representing the state board for charter schools.

4. One member from a school district with a student count of less than six hundred in a county with a population of less than three hundred thousand persons.

5. One member from a school district with a student count of six hundred or more but less than three thousand.

6. One member from a school district with a student count of more than three thousand.

7. One member representing transportation administrators.

8. One member who is a certified school bus driver or school bus driver instructor.

9. One member representing a private sector school bus service provider or a private sector student transportation service provider.

10. One member from a charter school with a student count of less than six hundred.

11. One member from a charter school with a student count of more than six hundred.

12. One member with expertise in electric vehicle fleets, electric vehicle charging infrastructure or charging management services.

13. Two public members.

B. The members shall serve staggered three-year terms unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

C. The student transportation advisory council shall:

1. Meet at least twice annually.

2. Select a chairperson from its members.

3. Advise and assist the department of public safety in developing the rules required by sections 28-900 and 28-3228.

4. Recommend curricula for school bus driver safety and training courses required by section 28-3228.

5. Advise and consult with the department of public safety concerning matters related to the certification of school bus drivers and the safety of school buses and vehicles described in section 15-925.

6. Advise and consult with the department of public safety concerning matters related to modernizing and innovating K-12 student transportation to reduce transportation barriers for students, increase access to public school options and provide more transportation options for school districts and charter schools, including electric transportation.

7. Advise and consult with the department of administration concerning purchasing strategies to maximize transportation resources and find efficiencies to modernize and properly size transportation vehicles and systems.

8. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide written notice to each person on the list at least fifteen days before the date on which the meeting is to be held. The notice shall be sent by mail or electronic means to the party's last address of record with the council or by any other method reasonably calculated to effect actual notice to any party expressing interest in the council's activities. Written notice by electronic means is effective when transmitted. For other methods written notice is effective on receipt or five days after the date shown on the postmark stamped on the envelope, whichever is earlier.

9. Preapprove contract carriers and private parties as prescribed in section 15-923, subsection B.

D. Members of the student transportation advisory council are not eligible to receive compensation or reimbursement for expenses.

28-900. School transportation rules

A. The department of public safety in consultation with the student transportation advisory council established by section 28-3053 shall adopt rules as necessary to improve the safety and welfare of student passengers by minimizing the probability of accidents involving school buses and student passengers and by minimizing the risk of serious bodily injury to student passengers in the event of an accident.

B. The rules may include:

1. Minimum standards for the design and equipment of school buses that are designed for sixteen or more passengers.

2. Minimum standards for the periodic inspection and maintenance of school buses that are designed for sixteen or more passengers.

3. Procedures for the operation of school buses that are designed for sixteen or more passengers.

4. Minimum standards for the design and equipment of motor vehicles described in section 15-925 that are substantially different than the minimum standards prescribed in paragraph 1 of this subsection.

5. Minimum standards for the periodic inspection and maintenance of motor vehicles described in section 15-925.

6. Procedures for the operation of motor vehicles described in section 15-925.

7. Other criteria as deemed by the department of public safety and the student transportation advisory council to be necessary and appropriate to ensure the safe operation of school buses and motor vehicles that are described in section 15-925. Any rules adopted pursuant to this section shall allow for a variety of vehicles to be used to meet the needs of students and systems of varying sizes and locations.

C. The rules shall provide, if applicable, minimum standards equal to or more restrictive than those adopted by the United States department of transportation in accordance with 23 United States Code and rules adopted pursuant to 23 United States Code.

D. Notwithstanding a rule adopted by the department of public safety with respect to exterior color of a school bus that is designed for sixteen or more passengers, in order to reduce the interior temperature of a school bus, the exterior top of a school bus may be painted white, but the white area shall not extend beyond the center clearance lights, front and rear, and shall not extend below a line five inches above the top of the side windows.

E. An officer or employee of any school district or charter school who violates any of the rules or who fails to include the obligation to comply with the rules in any contract executed by the officer or employee on behalf of the school district or charter school is guilty of misconduct and is subject to removal from office or employment. Any person who operates a school bus or motor vehicle under contract with a school district or charter school and who fails to comply with any of the rules is in breach of contract, and the school district or charter school shall cancel the contract after notice and a hearing by the responsible officers of the school district or charter school.

F. The department of public safety shall enforce the rules adopted pursuant to this section.

28-3228. School bus drivers; student transportation requirements; rules; cancellation of certificate

A. A person shall not operate a school bus that is designed for sixteen or more passengers and that transports school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety. A person shall not operate a vehicle described in section 15-925 to transport schoolchildren unless the person possesses the appropriate license class for the size of the vehicle being operated, a school bus driver certificate that is issued by the department of public safety and a valid fingerprint clearance card as required by subsection D of this section.

B. To be certified as a school bus driver for a vehicle that is designed for sixteen or more passengers, a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of public safety in consultation with the student transportation advisory council established by section 28-3053.

2. Complete an initial instructional course on school bus driver safety and training, including behind the wheel training.

C. The department of public safety in consultation with the student transportation advisory council established by section 28-3053 shall adopt rules that establish minimum standards for the certification of school bus drivers and drivers of other vehicles described in section 15-925. In cooperation with local school districts and charter schools, the department of public safety shall provide for school transportation safety and training courses. The standards established shall:

1. Include requirements concerning knowledge of operating a school bus or a vehicle described in section 15-925, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus or vehicle described in section 15-925 or that might endanger the health or safety of passengers, knowledge of first aid, establishment of school bus and other vehicle safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of public safety and the student transportation advisory council established by section 28-3053 prescribe for the protection of the public.

2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the ability of the applicant to safely operate a school bus or vehicle described in section 15-925.

3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

4. Require the applicant to possess a commercial driver license issued by the department, except that:

(a) Notwithstanding subsection A of this section the applicant may possess a commercial driver license issued by another state if the applicant will be driving a school bus for a school district that is adjacent to that state.

(b) An applicant to drive a vehicle described in section 15-925 does not need to possess or obtain a commercial driver license. This subdivision applies only if a commercial driver license is not required by state or federal law to operate the vehicle based on the vehicle's gross vehicle weight rating or occupancy.

D. Each person who applies for a school bus driver certificate shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 and shall submit an identity verified fingerprint card as described in section 15-106 that the department of public safety shall use to process the fingerprint clearance card as outlined in section 15-106.

E. A person who is issued a school bus driver certificate shall maintain a valid identity verified fingerprint clearance card for the duration of any school bus driver certification period.

F. The department of public safety shall suspend a school bus driver certificate if the fingerprint clearance card is invalid, suspended, canceled or revoked.

G. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

H. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

I. The department of public safety shall enforce the rules adopted pursuant to this section.

G.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON EXTENSION REQUEST FROM DEPARTMENT OF ENVIRONMENTAL QUALITY FOR FIVE-YEAR REVIEW REPORT ON TITLE 18, CHAPTER 11, ARTICLE 1

Katie Hobbs
Governor

Arizona Department of Environmental Quality

Karen Peters
Deputy Director

January 10, 2024

SENT VIA EMAIL ONLY

Jessica Klein
Chairperson
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007
grrc@azdoa.gov

Re: Five-Year Review Report for A.A.C. Title 18, Chapter 11, Article 1 (Water Quality Standards) – Extension Request

Chairperson Klein:

Pursuant to A.R.S. § 41-1056(F) and A.A.C. R1-6-303(B), the Arizona Department of Environmental Quality (ADEQ) requests a one-year extension of the April 30, 2025 due date for the above-referenced Five-Year Review Report. ADEQ recently completed modifications to Article 1 and is in the process of modifying the rules once again to bring our water quality standards in line with Federal requirements. ADEQ requests a new deadline date of April 30, 2026.

ADEQ completed the process of making significant modifications to our Clean Water Act (CWA) programs in 2023 as a result of the landmark water quality legislation passed as HB2691 (2021). That bill directed the ADEQ to develop a state-level Surface Water Protection Program and establish a variety of other regulations. ADEQ finalized those modifications to Article 1 on January 27, 2023 at 29 A.A.R. 301.

Additionally, ADEQ has filed both a Notice of Proposed Rulemaking (NPRM) and a Supplemental Notice of Proposed Rulemaking (SNPRM) that will make further changes to Article 1. The NPRM was published on May 17, 2024, at 30 A.A.R. 957 and the SNPRM was published on November 8, 2024, at 30 A.A.R. 3296. ADEQ anticipates filing a Notice of Final Rulemaking during calendar year 2025.

Please contact Jonathan Quinsey at 602-771-8193 or quinsey.jonathan@azdeq.gov if you have any questions.

Sincerely,

DocuSigned by:
2D99F735421C4FC...

Trevor Baggiore
Director, Water Quality Division
Arizona Department of Environmental Quality

CC:
Paralegal Project Specialist
Governor's Regulatory Review Council

H.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON DEPARTMENT OF HEALTH SERVICES RULE R9-10-819

6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate the assisted living facility;
   c. If applicable:
      i. An identification of residents needing assistance for evacuation, and
      ii. An identification of residents who were not evacuated;
   d. Any problems encountered in conducting the evacuation drill; and
   e. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.

B. A manager shall ensure that:
1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
2. The resident's orientation is documented.

C. A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.

D. When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
1. Immediately notifies the resident's emergency contact and primary care provider; and
2. Documents the following:
   a. The date and time of the accident, emergency, or injury;
   b. A description of the accident, emergency, or injury;
   c. The names of individuals who observed the accident, emergency, or injury;
   d. The actions taken by the caregiver or assistant caregiver;
   e. The individuals notified by the caregiver or assistant caregiver; and
   f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.

E. A manager of an assisted living center shall ensure that:
1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
   a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and
   b. A sprinkler system is installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order;
2. For the areas of the assisted living center providing only supervisory care services:
   a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
   b. The assisted living center complies with the requirements in subsection (F);
3. A fire inspection is conducted by a local fire department or the State Fire Marshal before licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
4. Any repairs or corrections stated on the fire inspection report are made; and
5. Documentation of a current fire inspection is maintained.

F. A manager of an assisted living home shall ensure that:
1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
3. A rechargeable fire extinguisher:
   a. Is serviced at least once every 12 months, and
   b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
4. Except as provided in subsection (G):
   a. A smoke detector is:
      i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
      ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
      iii. In working order; and
      iv. Tested at least once a month; and
   b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and
6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.

G. A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:
1. Are installed and in working order, and
2. Meet the requirements in subsection (E)(1).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-819. Environmental Standards

A. A manager shall ensure that:
1. The premises and equipment used at the assisted living facility are:

a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;

2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Garbage and refuse are:
   a. Stored in covered containers lined with plastic bags, and
   b. Removed from the premises at least once a week;
4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
5. Common areas:
   a. Are lighted to ensure the safety of residents, and
   b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
6. Hot water temperatures are maintained between 95º F and 120º F in areas of an assisted living facility used by residents;
7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
10. Oxygen containers are secured in an upright position;
11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
13. Equipment used at the assisted living facility is:
   a. Maintained in working order;
   b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
   c. Used according to the manufacturer's recommendations;
14. If pets or animals are allowed in the assisted living facility, pets or animals are:
   a. Controlled to prevent endangering the residents and to maintain sanitation;
   b. Licensed consistent with local ordinances; and
   c. For a dog or cat, vaccinated against rabies;
15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
   a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
   b. If necessary, corrective action is taken to ensure the water is safe to drink; and
   c. Documentation of testing is retained for at least 12 months after the date of the test; and
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. If a swimming pool is located on the premises, a manager shall ensure that:
1. On a day that a resident uses the swimming pool, an employee:
   a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
      i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
      ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
      iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
   b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-820. Physical Plant Standards

A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that:
1. Are applicable to the level of services planned to be provided or being provided; and
2. Were in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. A manager shall ensure that:
1. The premises and equipment are sufficient to accommodate:
   a. The services stated in the assisted living facility's scope of services, and
   b. An individual accepted as a resident by the assisted living facility;
2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
4. At least one bathroom is accessible from a common area and:
   a. May be used by residents and visitors;
   b. Provides privacy when in use; and
   c. Contains the following:
      i. At least one working sink with running water,
      ii. At least one working toilet that flushes and has a seat,